IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

THE STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation,

Defendant.

2

TO THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Your Oratrix, the State of Minnesota, Complainant, by Wallace B. Douglas, Attorney General thereof, brings this its Bill of Complaint against the Northern Securities Company, a corporation organized under and by virtue of the laws of the State of New Jersey, and alleges:

I.

That by an Act of Congress, entitled, "An Act for the Admission of Minnesota into the Union," approved May 11th, A. D. 1858, 3
the said State of Minnesota was admitted into the Union upon an equal footing with the original states.

II.

That said Northern Securities Company is a corporation organized, as hereinafter alleged, under and by virtue of the Laws of the State of New Jersey, and is a citizen of the State of New Jersey.

III.

A.

That by an Act of the Congress of the United States, of March 12, 1860, extending to the State of Minnesota the Swamp Lands Grant theretofore made to the State of Arkansas, and by
4 various subsequent acts, the Congress of the United States donated to the State of Minnesota, from the Public Domain, large quantities of lands situated within the State of Minnesota, and of the value of several millions of dollars. That the State of Minnesota, now has left and undisposed of, more than three million acres of said lands, of the value of more than Fifteen Million Dollars, much of which said land is located in the territory traversed by the railroads of the Great Northern and Northern Pacific Railway Companies, as hereinafter alleged. That the value of said land, and the salability thereof, depends in very large measure upon having free, uninterrupted and open competition in passenger and freight rates over the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies.

5 That many of said lands are vacant and unsettled and located in regions not at present reached by railway lines, and depend for settlement, upon the construction of lines in the future; that it has heretofore been the practice of said Great Northern and Northern Pacific Railway Companies, respectively, to extend spur lines into territory adjacent to each of said roads, as well as into new territory, for the purpose of developing such territory, as well as to obtain traffic therefrom; that such new lines have been built in the past very largely by reason of the rivalry heretofore existing between said companies, for existing, as well as new, business; that under the consolidation and unity of control hereinafter set forth, such rivalry will cease, and many of the lands now owned by the State of Minnesota will not be reached by railroads for years to come, if at all, owing to such combination and consolidation remov-
6 ing all rivalry and competition between said companies; that the settlement and occupation of said lands will add very much to their value and such occupation will depend entirely upon the accessibility of railway lines and transportation facilities for marketing the products raised thereon; that if said lands are sold and become occupied, they will add very largely to the taxable value of the property of the state, and that said lands cannot be so sold or

the income of the state increased thereby without the construction of railroad lines to, or adjacent to, the same.

B.

That the State of Minnesota is now and for many years past has been the owner of, and continuously maintained, an educational 7
institution for the benefit of its citizens, known as the University of Minnesota; also a large number of hospitals for the insane, within its territorial limits; also five normal schools for the education of teachers within the state; also a State Training School for Boys and Girls; also several state schools for the education, care and maintenance of the deaf, dumb, blind and feeble-minded; also a state school for indigent and homeless children; also a state penitentiary and reformatory.

That for many years past the State of Minnesota has continuously maintained and supported each of said institutions, and in the care, maintenance and management thereof has been compelled to and in the future, of necessity, will annually purchase large quantities of supplies for said institutions, including provisions, clothing and fuel, a great portion of which the State of Minnesota is compelled to ship over the different lines of railway owned and operated by the Northern Pacific Railway Company and the Great Northern Railway Company. 8

That the State of Minnesota is compelled to expend annually more than Seven Hundred Thousand Dollars in the operation and maintenance of said public institutions, most of which sum is raised by general taxation upon the lands and other property of the citizens of the State of Minnesota, and situated therein. That the amount of taxes which said State of Minnesota can collect, and the successful maintenance of its said public institutions, as well as the performance of its governmental functions and affairs, depends largely upon the value of the real and personal property situated within its territorial limits, and the general prosperity and 9
business success of its citizens. That the value of said real and personal property of the citizens of the State of Minnesota, as well as their business success and general prosperity, depend very largely upon maintaining in said state free, open and unrestricted competition between the railway lines of said Great Northern and Northern Pacific Railway Companies respectively within said state.

C.

That it has been the settled policy and practice of the State of Minnesota since its organization as a territory, to develop the resources of the state by encouraging railroad building therein, and in furtherance of this policy, the Territory of Minnesota,
10 by an act thereof, under date of May 22nd, 1857, granted to the Minnesota and Pacific Railroad Company a charter, and in consideration of the construction and maintenance of a line of railway in Minnesota, by said company, said Territory donated to it out of its public domain about seven hundred thousand acres of land. That said Minnesota and Pacific Railroad Company thereafter became insolvent, and all its property was placed in the hands of a receiver; that such procedings were thereafter had that all the property of the last named company, including said land, was duly sold and conveyed to the St. Paul, Minneapolis and Manitoba Railway Company, hereinafter mentioned.

That the State of Minnesota, by an act of its legislature, and in consideration of the construction and maintenance of a line of rail-
11 way by the Great Northern Railway Company, hereinafter referred to, between St. Cloud and Hinckley, a distance of eighty-four miles, donated and conveyed to said last named company upwards of four hundred thousand acres of land then owned by and situated in the State of Minnesota, which said land was then worth more than One Million Dollars. That in carrying out said policy, and in aid of the building of railways within the State of Minnesota, there has been granted out of the public domain within the limits of the State of Minnesota, upwards of 10,500,000 acres of land, nearly all of which has been granted to said Great Northern and Northern Pacific Railway Companies, and the subsidiary companies owned and controlled by them.

D.

12

That by an act of the legislature of the State of Minnesota, approved March 3rd, 1881, entitled "An Act Granting Swamp Lands to Aid in the Construction of the Main Line of the Road of the Little Falls and Dakota Railway Company," and which now is a part of the Northern Pacific Railway Company system, hereinafter referred to, the State of Minnesota donated to said Little Falls and Dakota Railway Company, Two Hundred Forty-three Thousand Five Hundred and Ninety-one (243,591) acres of land situated in and

then belonging to said state, in consideration of the construction and maintenance by said last named railway company of a line of railway extending from Little Falls to Morris, in the State of Minnesota.

IV.

Your Oratrix further alleges that immense quantities of wheat 13
and other products are shipped annually from East Grand Forks, Crookston, Moorhead, Fergus Falls, and other competitive points within the State of Minnesota, and all on the lines of railway of the said Great Nothern and Northern Pacific Railway Companies, hereinafter referred to, to the cities of Duluth, St. Paul and Minneapolis, within the State of Minnesota. That nearly all of the shipments of such products made from the above named initial points are consigned to various citizens at either the city of Duluth, St. Paul or Minneapolis over one or the other of said lines of railroad last above named. That enormous quantities of merchandise have been and will continue to be shipped annually, over said lines of railway, between the cities of St. Paul and Minneapolis and various other cities and villages along said lines of railway situated within the State of 14
Minnesota, and which are purchased and used entirely by the people of said state. That the competition in both freight and passenger traffic to and from said places has always been sharp and active between said railway companies, and has secured to the residents of said cities, as well as the State of Minnesota, and to the State of Minnesota itself, much lower rates for both freight and passengers than would otherwise have been obtained or than will or can be obtained in case the consolidation or unity of control and management of said Great Northern and Northern Pacific Railway Companies hereinafter alleged, is not enjoined as herein prayed.

V.

That the Great Northern Railway Company is a corporation 15
organized and existing under and by virtue of the laws of the State of Minnesota, to-wit: under an act duly passed by the Territory of Minnesota, entitled, "An Act to incorporate the Minneapolis and St. Cloud Railroad Company," approved March first, A. D. 1856, and various subsequent acts of the State of Minnesota amendatory thereof and supplemental thereto, respectively entitled as follows:

"An Act to amend an Act entitled, 'An Act to incorporate the

Minneapolis and St. Cloud Railroad Company,' passed March 1st, 1856." Approved February 23rd, 1864.

"An Act of the Legislature of the State of Minnesota, entitled 'An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter,
16 or any other railroad in Southern Minnesota'." Approved February 11, 1865.

"An Act to amend an Act entitled 'An Act to incorporate the Minneapolis and St. Cloud Railroad Company,' approved March 1st, 1856, and to repeal certain portions of an Act amending the Charter of said Company, passed February 23rd, 1864." Approved February 28th, 1865.

"An Act to amend an Act entitled 'An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and Winona and St. Peter Railroad, or any other railroad in Southern Minnesota'." Approved March 5th, 1869.

"An Act to amend the Charter of the Minneapolis and St. Cloud
17 Railroad Company." Approved March 6th, 1869.

"An Act to amend the Charter of the Minneapolis and St. Cloud Railroad Company." Approved March 2nd, 1870.

"An Act to extend the time for the construction and completion of the branch of the Minneapolis and St. Cloud Railroad Company." Approved March 11th, 1879.

"An Act to amend an Act entitled 'An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in Southern Minnesota', approved February 11th, in the Year of Our Lord One Thousand Eight Hundred and Sixty-five as amended." Approved March 1st, 1885.

That on the 16th day of September, 1889, the corporate
18 name of said company was duly changed to the Great Northern Railway Company. That during the year 1889, said railway company caused to be constructed a line of railway extending from St. Cloud, Minnesota, to Hinckley, Minnesota, which line was immediately conveyed to the St. Paul, Minneapolis and Manitoba Railway Company, a corporation duly organized and existing under and by virtue of the Laws of the State of Minnesota, hereinafter referred to as the Manitoba Company. That said Manitoba Com-

pany, prior to the first day of February, 1890, had built, purchased and put in operation various lines of railway within the State of Minnesota, as well as in the States of North Dakota, Montana, Idaho and Washington, connecting by rail the cities of St. Paul and Minneapolis, within the State of Minnesota, and various other cities and villages within said state, with each other, and with Puget Sound, on the Pacific ocean; which said railways are hereinafter more particularly described. 19

That on the first day of February, 1890, said Manitoba Railway Company leased to the said Great Northern Railway Company, for a period of nine hundred and ninety-nine years, all of the lines of railway, including the rolling stock then owned and controlled by said Manitoba Company; that ever since said last named date said Great Northern Railway Company has continued to and now does control, operate and maintain each and all of said lines as one complete railroad system. That said lines of railway so constructed by said Manitoba Company and now so controlled, operated and maintained by said Great Northern Railway Company under said lease, are described as follows:

A line of railway extending from St. Paul, Minnesota, via Minneapolis, Elk River, St. Cloud, Sauk Centre, Fergus Falls, Glyndon, Crookston to the northern boundary line of the State of Minnesota at St. Vincent. 20

Another line of railway extending from Minneapolis, Minnesota, along the western bank of the Mississippi river to St. Cloud, Minnesota.

Another line of railway extending from St. Cloud easterly to Hinckley, Minnesota.

Another line of railway extending from Elk River, Minnesota, northward to Malaco, Minnesota, on the line of the St. Cloud and Hinckley Branch, last above referred to.

Another line of railway extending from Minneapolis, Minnesota, to Breckenridge, Minnesota. 21

Another line extending from Sauk Centre, Minnesota, to Park Rapids, Minnesota.

Another line of railway extending from Hutchinson Junction to Hutchinson, Minnesota.

Another line of railway extending from Benson, Minnesota, thence in a westerly direction to the western boundary line of the state; thence to Watertown, South Dakota.

Another line of railway extending from Evansville, Minnesota, westerly to the state boundary line, thence to Ellendale, North Dakota.

Another line of railway extending from Moorhead, Minnesota, westerly to the state boundary line; thence to Wahpeton, North
22 Dakota.

Another line of railway extending from Moorhead, Minnesota, to Crookston, Minnesota.

Another line of railway extending from Barnesville, Minnesota, to Moorhead, Minnesota.

Another line of railway extending from Carman, Minnesota, to Foster, Minnesota.

Another line of railway extending from Crookston, Minnesota, to Red Lake Falls and Thief River Falls, Minnesota.

All of the foregoing lines being situated in the State of Minnesota, except as hereinafter otherwise expressly stated.

That said Great Northern Railway Company now either owns or controls, and operates and maintains, by virtue of said lease, a line
23 or system of railways connecting with said lines above referred to, and extending from the western boundary line of the State of Minnesota through the States of North Dakota, Montana, Idaho and Washington, to Puget Sound on the Pacific Coast. The said railway lines covered by said lease, or owned by said Great Northern Railway Company aggregate a total of about four thousand five hundred miles.

That many of said railroads above described being located within the State of Minnesota, were built by subsidiary companies or corporations, and said Great Northern Railway Company now owns all of the capital stock of such corporations in addition and as supplemental to said lease; and in addition thereto said Great Northern Railway Company owns all of the capital stock of the Eastern Railway Company of Minnesota, a corporation organized under the
24 laws of the State of Minnesota, and which owns and operates a railway line extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; and from Duluth, Minnesota, to Bemidji, Minnesota; and by virtue of such ownership of stock said Great Northern Railway Company dictates the policy of said railway company and controls the lines of railway and properties of said Eastern Railway Company, and operates the same as a part of the Great Northern system of railway.

That said Great Northern Railway Company also owns all of the

capital stock of the Willmar and Sioux Falls Railroad Company, a corporation owning a railroad extending from Willmar, Minnesota, to Yankton, South Dakota, and by virtue of such ownership of stock, dictates the policy of and owns and controls the railway line and property of said Willmar and Sioux Falls Railroad Company.

That all of the railways and railway lines hereinbefore described 25
are operated and controlled by and form a complete system under the name of said Great Northern Railway Company.

That the Charter of said Great Northern Railway Company provides as follows: "That all of the affairs and business of said company shall be conducted by or under the direction of a board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things necessary to be done and not inconsistent with the Constitution and Laws of the United States, or the Laws of this Territory, or this Act."

Your Oratrix further alleges that the Board of Directors of said Great Northern Railway Company, at the time of the organization of the Northern Securities Company, hereinafter referred to, to-wit, 26
on or about the 13th day of November, 1901, was and now is composed of the following named persons, to-wit: James J. Hill, James N. Hill, Samuel Hill, William P. Clough, Edward Sawyer, M. D. Grover, Jacob H. Schiff and Henry W. Cannon; and at said date the managing or executive officers of said corporation were and now are as follows: President, James J. Hill; Vice President, William P. Clough; Secretary and Assistant Treasurer, E. T. Nichols. That on said last named date said Great Northern Railway Company had issued, and there was then outstanding, a total of One Hundred and Twenty-five Million Dollars, par value, of the capital stock of said corporation, and your Oratrix is informed and believes, and upon information and belief alleges, that said James J. Hill was on said last named date the owner of or in possession 27
and control of, or had subject to his direction and disposition, more than a majority of said capital stock so outstanding.

VI.

That the Northern Pacific Railroad Company was formerly a corporation organized and existing under and by virtue of an Act of the Congress of the United States, entitled, "An Act granting

land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast, by the northern route." Approved July 2nd, 1864; and a joint resolution of Congress extending the time for the completion of said railroad until July 1st, 1868; and a joint resolution granting the consent of Congress provided for in Section Ten of said Act, incorporating the
28 Northern Pacific Railroad Company; approved March 1st, 1869; the joint resolution of Congress granting the right of way for the construction of a railroad from Portland, Oregon, to a point west of the Cascade Mountains in Washington Territory, approved April 1st, 1869; the joint resolution of Congress authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes, approved May 31st, 1870. And Complainant asks leave to refer to and have each of said acts and resolutions considered as though fully herein set forth.

That under and in pursuance of the said several acts and joint resolutions of Congress, the Northern Pacific Railroad Company constructed and put into operation, prior to January 1st, 1890,
29 all of its main line of road, extending from Ashland, in the State of Wisconsin, westward across the States of Minnesota, North Dakota, Montana and Idaho, and in the State of Washington to Walla Walla Junction; also all that other part of its main line of railroad extending from Portland, Oregon, to Tacoma, Washington; also the whole of its Cascade Branch, extending from Pasco Junction, in the State of Washington, to Tacoma, in the State of Washington.

That said Northern Pacific Railroad Company had also, prior to said first day of January, 1880, acquired and then owned all of the capital stock of the following named railroad companies and corporations, to-wit: The St. Paul and Northern Pacific Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from St. Paul,
30 Minnesota, to Brainerd, Minnesota; and from Little Falls, Minnesota, to Staples, Minnesota; also of the Duluth and Manitoba Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a line of railroad extending from Winnipeg Junction, Minnesota, via Red Lake Falls, Minnesota, to the western boundary line of said state, and thence to Grand Forks, North Dakota; and thence to the international bound-

ary line between the State of North Dakota and Canada; also of the Duluth, Crookston and Northern Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from Fertile Junction, Minnesota, through Crookston to Carthage Junction, Minnesota; also of the Little Falls and Dakota Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then 31
owned a railroad extending from Little Falls, Minnesota, to Morris, Minnesota; also of the Northern Pacific, Fergus Falls and Black Hills Railroad Company, a corporation organized under the laws of the State of Minnesota, and which owned a line of railroad extending from Wadena, Minnesota, thence westerly to the western boundary line of the state; and thence to North Dakota points; also all of the capital stock of various railroad corporations or companies organized in the States of North Dakota, South Dakota, Montana and Washington, which owned and operated various railway lines in said states respectively. The said railway lines built by said companies within the State of Minnesota, as well as those built outside of the State of Minnesota, and the capital stock of the corporations so building said lines, and owned by said Northern Pa- 32
cific Railroad Company, as hereinbefore alleged, were operated, managed and controlled by said Northern Pacific Railroad Company as a system of railway or railways extending from and between various points in the State of Minnesota, more specifically hereinafter referred to, through said state and thence to the Pacific Coast; and aggregate about four thousand five hundred miles of railway.

VII.

That the Northern Pacific Railway Company is now and for upwards of five years last past has been a corporation organized under and by virtue of the laws of the State of Wisconsin; said corporation being organized during the year 1895. That thereafter and prior to the time said Northern Pacific Rail- 33
way Company became possessed of and the owner of the railway lines and property formerly owned and operated by said Northern Pacific Railroad Company, said Northern Pacific Railway Company filed with the Secretary of State of the State of Minnesota, in accordance with the terms and provisions of the laws of said State of Minnesota, a duly authenticated and certified copy of its Articles of Incorporation, and thereupon said Northern Pacific Railway

Company became a corporation of and within the State of Minnesota, and subject to all of the laws, regulations and provisions of said State of Minnesota relating to railway or railroad corporations, including those acts or parts of acts hereinafter specifically pleaded or referred to.

34 That under the Charter or Articles of Incorporation of said Northern Pacific Railway Company, the powers of said company are delegated to and exercised by a board of fifteen directors; that during the month of April, 1901, the following named persons constituted and now are the members of the Board of Directors of said last named company: James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, H. McK. Twombly, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman and Eben B. Thomas. That on the 13th day of November, 1901, J. Pierpont Morgan, with certain other persons to your Oratrix unknown, but who were acting with said Morgan, owned and had in their possession, or held under and subject to their control and disposition, upwards of eighty-five per cent. of the total 35 capital stock of said Northern Pacific Railway Company then outstanding. That the total amount of capital stock of said Northern Pacific Railway Company then issued and outstanding amounts to One Hundred and Fifty-five Millions of Dollars, par value, Seventy-five Millions of Dollars of which was preferred stock subject to retirement as provided by the Articles of Incorporation and agreement under which the same was issued.

That during the year 1893, the said Northern Pacific Railroad Company became insolvent, and all of the property of said last named company, of whatever kind or character, was duly placed in the hands of receivers appointed for that purpose by the Circuit Court of the United States for the Eastern District of Wisconsin; and thereafter in proceedings ancillary thereto, by the various circuit courts of the United States in whose jurisdictions said prop- 36 erty was located. That after said Northern Pacific Railway Company had filed its said Articles of Incorporation in the State of Minnesota and had become subject to its laws, and during the year 1896, said Northern Pacific Railway Company duly purchased and became the owner of the entire railroad properties and railway lines, including the right of way, rolling stock and capital stock, formerly owned by said Northern Pacific Railroad Company; and immediately thereafter entered into the possession thereof; and

at all times since has continuously owned and operated each and all of the said lines of railway so situated within the State of Minnesota, and which connect the cities of St. Paul and Minneapolis and Duluth, and various other villages and cities within the State of Minnesota, and connect with the lines of railway outside of said State of Minnesota.

That during the year 1899, said Northern Pacific Railway Company purchased, and ever since has owned and operated, a line of railway extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; that said last named line parallels and is a competing line of railway for both freight and passenger traffic with the line of railway between said Minneapolis and St. Paul and Duluth, hereinbefore described, and which is owned by said Eastern Railway Company of Minnesota, but operated, controlled and managed by said Great Northern Railway Company as a part of the system of said last named company, as hereinbefore alleged.

That the lines of railway now owned and operated by said Great Northern Railway Company within the State of Minnesota are parallel and competing lines for freight and passenger traffic with the lines of railway now owned, operated and controlled by said Northern Pacific Railway Company within the State of Minnesota, between the following points in said state, to-wit: The Cities of St. Paul and Minneapolis and the City of Duluth, Minnesota, and the various cities and villages between said points; also between the Cities of St. Paul and Minneapolis and Crookston, Minnesota, by way of Fergus Falls, and the various cities and villages between said points; also between the Cities of St. Paul and Minneapolis and Crookston by way of Breckenridge, and the towns and cities between said points; and also between the Cities of Duluth and Crookston, and the cities and villages between said points, as well as the country adjacent to the lines of railway between each and all of said cities; and the said lines of railway owned, operated and controlled by said Great Northern Railway Company and also the lines of railway owned, operated and controlled by said Northern Pacific Railway Company which connect with the said lines of railway owned, operated and controlled by each of said companies respectively within the State of Minnesota, are parallel and competing lines through the States of North Dakota, Montana, Idaho and Washington to Puget Sound on the Pacific Coast for passenger and freight traffic. That during all of the time

aforesaid each and all of said lines of railway were maintained and operated by said respective companies as common carriers of freight and passengers within the State of Minnesota; and that said companies are now, and for upwards of eleven years last past have been, the only railway companies owning or operating lines of railway crossing the State of Minnesota and connecting the Pa-
40 cific Ocean by rail with points in Minnesota; also the only lines of railway traversing east and west the northern tier of states of the United States lying west of the Mississippi river, and connecting such territory and territory tributary thereto by rail with the Pacific Ocean; and, with one exception, the only lines of railway crossing the north half of the State of Minnesota in any direction.

VIII.

That the Chicago, Burlington and Quincy Railway Company is and, for many years last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; and, as such, until the disposition of its capital stock as
41 hereinafter alleged, owned, operated and controlled an extensive system of railway lines extending from the City of Chicago, in the State of Illinois, in a westerly direction to the City of Denver, in the State of Colorado; and also in a westerly and northwesterly direction from said City of Chicago, to the City of Billings, in the State of Montana; which last named point is a junction and competitive point for freight and passenger traffic with said Northern Pacific Railway Company; and also from said City of Chicago to the Cities of St. Paul and Minneapolis, in the State of Minnesota; and in addition to said main lines, owned, operated and controlled a large number of connecting and tributary lines, extending to various cities and towns in the States of Illinois, Iowa, Missouri, Wisconsin, Minnesota, Nebraska, Kansas, Wyoming and Montana. That the total mileage of said railway company is approximately
42 Seven Thousand Four Hundred Miles. That during the year 1901, the said Great Northern Railway Company and said Northern Pacific Railway Company jointly purchased ninety-eight per cent. of the total capital stock of said Chicago, Burlington and Quincy Railway Company, aggregating approximately One Hundred and Seven Millions of Dollars, par value, and now own the same; and issued in payment therefor the joint bonds of said Great Northern and Northern Pacific Railway Companies, payable in twenty years from

the date thereof, and bearing interest at the rate of four per cent. per annum, payable semi-annually. That said Great Northern and Northern Pacific Railway Companies issued and delivered in exchange for each One Hundred Dollars in amount of said Chicago, Burlington and Quincy Railway Company stock Two Hundred Dollars in amount of the said bonds.

That under and by virtue of the purchase of said stock the 43
joint ownership and control of the said Chicago, Burlington and Quincy Railway Company is vested in and ever since has been exercised by the said Great Northern and Northern Pacific Railway Companies.

IX.

That the defendant Northern Securities Company is a corporation organized, existing in and doing business under and by virtue of the laws of the State of New Jersey. That said corporation was organized on the 13th day of November, A. D. 1901, with its principal office for the transaction of its business located at the 44
City of Hoboken, County of Hudson and State of New Jersey and is a citizen of the State of New Jersey.

That the Articles of Incorporation of said Northern Securities Company are as follows:

CERTIFICATE OF INCORPORATION

OF

NORTHERN SECURITIES COMPANY.

45

STATE OF NEW JERESY, SS.:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled An Act Concerning Corporations (Revision of 1896), and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First: The name of the corporation is NORTHERN SECURITIES COMPANY.

Second: The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the City of Hoboken, County of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is
46 Hudson Trust Company. Such office is to be the registered office of the corporation.

Third: The objects for which the corporation is formed are:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or
47 of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds, or other securities or evidences of indebtedness or stock are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

48 (5) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

Fourth: The total authorized capital stock of the corporation is Four Hundred Million Dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth: The names and postoffice addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

Name and Postoffice Address.	Number of Shares.
George F. Baker, Jr., 258 Madison Avenue, New York, New York.	100
Abram M. Hyatt, 214 Allen Avenue, Allenhurst, New Jersey.	100
Richard Trimble, 53 East Twenty-fifth Street New York, New York.	100

Sixth: The duration of the corporation shall be perpetual.

Seventh: The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the

unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term
52 of the director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the Board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey passed March 22, 1901, amending the 17th section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent
53 in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors. Any other officer or employe of the corporation may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws, or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole Board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and to such
54 extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers

of the president, of the treasurer, and of the secretary, respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation; to determine whether any, and, if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law. 55

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the Board of Directors or by a resolution of the stockholders. 56

The Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF, We have hereunto set our hands and seals, the twelfth day of November, 1901. 57

GEO. F. BAKER, JR. (L. S.)

ABRAM M. HYATT, (L. S.)

RICHARD TRIMBLE, (L. S.)

Signed, sealed and delivered
in presence of
GEO. HOLMES.

STATE OF NEW YORK,
County of New York,
MANHATTAN. } ss:

BE IT REMEMBERED, That on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Baker,
58 junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and I, having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

Endorsed,

"Received in the Hudson Co., N. J., Clerk's Office, Nov 13, A. D. 1901, and recorded in Clerk's Record No. ....., on Page .....
"MAURICE J. STACK, Clerk."

"Filed Nov. 13, 1901, George Wurts, Secretary of State."

That said Northern Securities Company was incorporated
59 at the instigation and request, and under the direction of, James J. Hill and William P. Clough, and certain other stockholders of said Great Northern Railway Company to your Oratrix unknown, who were co-operating with said James J. Hill and William P. Clough, and who, with said Hill and Clough, owned and controlled, or have the disposition and management, as hereinafter alleged, of a very large majority of the capital stock of said Great Northern Railway Company, and J. Pierpont Morgan and certain other stockholders of said Northern Pacific Railway Company, to your Oratrix unknown, who were co-operating with said Morgan, and who, with said Morgan, owned and controlled, or have the disposition and management of a very large majority of the capital stock
60 of said Northern Pacific Railway Company. That said Northern Securities Company was formed by George F. Baker, Jr., and Richard Trimble, of the City of New York and State of New York, and Abram Hyatt, of Allenhurst, in the State of New Jersey, who adopted the said Articles of Incorporation. That said three last named parties had no interest in said corporation other than the formation of the same for and at the request of said James J. Hill, William P. Clough, J. Pierpont Morgan, and their several as-

sociate stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, as above alleged, acting in concert with said parties.

That said James J. Hill, William P. Clough and J. Pierpont Morgan, who, with their associates, did on said 13th day of November, 1901, and prior thereto, own and control a large majority of the capital stock of both said Great Northern Railway Company and said 61
Northern Pacific Railway Company, were prior to, and at the time of, the organization of said Northern Securities Company, almost continually in conference with each other and with a large number of other stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, but whose names are to your Oratrix unknown, considering such organization and the scheme and agreement herein referred to, and the means and manner by which the laws of Minnesota, hereinafter referred to, could be most successfully evaded or avoided, all of which facts were well known to the organizers of said Northern Securities Company, including the parties executing the said Articles of Incorporation. That said Northern Securities Company was organized solely for the purpose of carrying out and accomplishing the 62
designs, agreement and plans of said James J. Hill and J. Pierpont Morgan and their said associate stockholders, as herein set forth, and to effect a consolidation of the property, railway lines, corporate powers and franchises of said Great Northern and Northern Pacific Railway Companies respectively, through said defendant, the Northern Securities Company.

That prior to the organization of said Northern Securities Company, the said owners and holders of a large majority of the capital stock of said Great Northern Railway Company, as well as the owners and holders of a large majority of the capital stock of said Northern Pacific Railway Company, as a part of the scheme or plan herein alleged, as well as a part of the plan and purpose of the organization of said Northern Securities Company, entered into a mutual agreement or arrangement, the exact terms of which are 63
unknown to your Oratrix, but which is in substance as follows:

The said owners of a large majority of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, mutually agreed with each other and certain persons who thereafter became the officers and directors of said Northern Securities Company to transfer or cause to be transferred to said Northern Securities Company in

exchange for the capital stock of said last named company substantially all of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, respectively; the said capital stock of the Great Northern Railway Company to be transferred to and exchanged for the capital stock of the said Northern Securities Company on the basis of one share
64 of the capital stock of the Great Northern Railway Company for one and 80-100 shares of the capital stock of said Northern Securities Company, and one share of the common stock of said Northern Pacific Railway Company for one and 15-100 shares of the capital stock of said Northern Securities Company. The $75,000,000 of the preferred stock of said Northern Pacific Railway Company to be retired in accordance with the provisions of the Articles of Incorporation of said Northern Pacific Railway Company, and the conditions and agreements under which the same was issued; said retirement to take place on the 1st day of January, 1902. The funds for retiring said preferred stock to be raised by the issuance by said Northern Pacific Railway Company of its negotiable bonds, bearing date November 15th, 1901, of the aggre-
65 gate amount of Seventy-five Million Dollars, payable January 1st, 1907, in gold coin of the United States, with interest thereon at the rate of four per cent. per annum, payable semi-annually in like gold coin, from and after January 1st, 1902. The said bonds, however, to be convertible at the option of either the holders thereof, or said Railway Company, into shares of the common stock of said Northern Pacific Railway Company at the rate of one share of stock for each One Hundred Dollars of the principal sum of such bonds, and the said common stock, when so taken in exchange for such bonds, to be converted into stock of said Northern Securities Company upon the basis of one share for each one and 15-100 shares of stock of said Northern Securities Company.

That said preferred stock could only be retired by resolution
66 of the Board of Directors of said Northern Pacific Railway Company; that a very large majority of said preferred stock was owned by certain individuals who were opposed to the agreement and plan herein referred to relative to turning over the management and control of said Northern Pacific Railway Company to said Northern Securities Company, and the holding of its stock by said Northern Securities Company; that the owners of said preferred stock so opposed to said agreement and plan were also

owners of sufficient of the common stock of said Northern Pacific Railway Company to give them a small majority of the total capital stock of said Northern Pacific Railway Company; thus making it necessary, in order to carry out the plan and agreement herein set forth and to vest the management and control of said Northern Pacific Railway Company in said Northern Securities Company in the manner and for the purposes herein alleged, to retire said preferred stock; all of which was well known to the Board of Directors of said Northern Pacific Railway Company and to said J. Pierpont Morgan and his associate stockholders of said Northern Pacific Railway Company, as well as said Northern Securities Company. 67

That on or about the 13th day of November, 1901, the Board of Directors of said Northern Pacific Railway Company took such official action as was necessary to retire said preferred stock upon the basis and in accordance with the plan and agreement herein set forth; and thereafter said preferred stock was retired by the issuance of the convertible bonds to the amount and in the manner herein alleged. That immediately after the retirement of said preferred stock, said Northern Pacific Railway Company, acting through its Board of Directors and executive officers, exercised its right and option of declaring said bonds to be convertible into shares of the common stock of said Northern Pacific Railway Company, and thereupon the same were so converted and the common stock of said Northern Pacific Railway Company issued in exchange therefor, upon the basis and for the purposes herein alleged. That in order to prevent the persons who owned said preferred stock, and who were opposed to the carrying out of the plan and agreement herein referred to, from acquiring a like control of the common stock, it was provided that the $75,000,000 of common stock into which the said bonds were convertible could only be subscribed for and taken by holders of the then outstanding $80,000,000 of the common capital stock of said Northern Pacific Railway Company; each share of said common stock then outstanding entitling the owner and holder thereof to take an additional seventy-five-eightieths of a share of said $75,000,000 additional common stock. That the retirement of said preferred stock and the conversion of the said bonds into common stock of said Northern Pacific Railway Company, and the exchange of said common stock for stock of said Northern Securities Company, as herein alleged, 68 69

were each and all a part of the agreement, plan and scheme of said J. Pierpont Morgan and his said associate stockholders of said Northern Pacific Railway Company who then and there owned and controlled a large majority of the then outstanding common stock of said Northern Pacific Railway Company, under and by which the
70 complete management and control of said Northern Pacific Railway Company was to be, and was thereafter, turned over to and vested in said Northern Securities Company in order that said Northern Pacific Railway Company, its property and franchises, might be in effect consolidated with the property and franchises of said Great Northern Railway Company, as herein alleged. That said James J. Hill and his associate stockholders of said Great Northern Railway Company had full knowledge of and assisted in retiring said preferred stock for the purposes and objects herein alleged. That as a part of said agreement and plan entered into between said James J. Hill and his associate stockholders and said J. Pierpont Morgan and his associate stockholders, each and all of whom were then, and are now, acting in concert for the purpose of evading and violating the Laws of the State of Minnesota, in the
71 manner, for the purposes, and with the object and design herein set forth, and in furtherance of said purposes and design, and to avoid the effect of any litigation which might be instituted to defeat the consummation of the agreement, plan and scheme herein referred to of vesting the complete management and control of the railway lines, properties and franchises of said Great Northern and Northern Pacific Railway Companies in said defendant Northern Securities Company, said parties further undertook and agreed with each other and the persons who thereafter became the officers and directors of the defendant Northern Securities Company that pending the delivery and transfer of a majority of the capital stock of said Great Northern Railway Company to said Northern Securities Company, the same should be held by or under the control of
72 some person or corporation to your Oratrix unknown; and that pending such delivery it was mutually agreed between said Hill and his associate stockholders and said Morgan and his associate stockholders and the persons who thereafter became the directors and officers of the defendant, as well as the person or corporation so temporarily holding said stock that the same should be held during said period for the purposes above set forth in trust for the use and benefit of the defendant, the Northern Securities Com-

pany; and that during such time the parties so holding said stock should attend and vote the same at all meetings of the stockholders of said Great Northern Railway Company, in the interests of the defendant, and as directed by the Board of Directors of said Northern Securities Company or the executive committee thereof, or in unison with the stock of said railway companies, actually assigned to and held by the defendant. That said 73
Northern Securities Company has not purchased, and does not intend to purchase the stock of either of said railway companies, except by issuing its stock in exchange for and in lieu of the stock of said railway companies on the basis and in the manner and for the purposes herein alleged.

That for the unlawful purposes aforesaid the said Northern Securities Company, by circular letter heretofore issued to the public, has offered and is still offering to issue and exchange for the capital stock of the said Great Northern and Northern Pacific Railway Companies, capital stock of said Northern Securities Company to the amount of One Hundred and Eighty Dollars par value thereof for each share of capital stock of said Great Northern Railway Company and to the amount of One Hundred and Fifteen Dollars 74
par value thereof for each share of stock of said Northern Pacific Railway Company. And that the said Northern Securities Company is about to receive, on the basis aforesaid, and will, unless enjoined therefrom, receive, hold and hereafter control all the capital stock of said Great Northern and Northern Pacific Railway Companies.

X.

That the organization of said Northern Securities Company in the manner hereinbefore alleged, and the making of said agreement or arrangement hereinbefore referred to, are each and all a part of a scheme or plan on the part of said James J. Hill and his said associate stockholders of the Great Northern Railway Company, and J. Pierpont Morgan and his said associate holders of 75
the stock of said Northern Pacific Railway Company, under and by which the said two last named Railway Companies are to be in effect consolidated, and the complete management and control of the business affairs of said corporations respectively placed in one body and under the direction and control of one man or one Board of Directors, through and by means of said defendant. That pursuant to said plan, agreement and arrangement, and in

consummation thereof, and for the purpose of placing the complete management and control of said Great Northern Railway Company and said Northern Pacific Railway Company under one management, and for the purpose of establishing, in effect, a consolidation of said railway companies, together with said railway lines and properties, in and through said defendant, the said J. Pierpont
76 Morgan and his associate stockholders have actually assigned and delivered to said Northern Securities Company upwards of 85 per cent. of the total capital stock of said Northern Pacific Railway Company; and your Oratrix alleges, on information and belief, that said James J. Hill and his associate stockholders of said Great Northern Railway Company, have also actually assigned and delivered to said Northern Securities Company upwards of 85 per cent. of the capital stock of said Great Northern Railway Company. That the sole purpose, object and effect of the transfer of said stock by said James J. Hill and his said associates and said J. Pierpont Morgan and his said associates to said Northern Securities Company was and is to transfer to and vest in said Defendant Northern Securities Company the complete management and
77 control of the respective lines of railway and railway properties of each of said Railway Companies within and without the State of Minnesota, and to place the complete management and control of the same, and the power to dictate the policy of each of said corporations, as well as the power and authority to fix rates and charges for the transportation of both freight and passengers within the State of Minnesota, as well as without said State, in the hands of and under the control of one party or Board of Directors, and thereby create, foster and perpetuate a monoply in railway traffic in the State of Minnesota.

That the purpose, object and effect of the incorporation of the defendant and the receipt by it of a controlling amount of the capital stock of the said Northern Pacific and Great Northern Rail-
78 way companies, as well as each act of the officers and Board of Directors thereof, in entering into, adopting or executing the agreement or plan herein set forth, including the issuance and exchange of the capital stock of the Northern Securities Company for the stock of the said Northern Pacific and Great Northern Railway Companies on the basis hereinbefore set forth, was and is to place the said railway companies and the property and franchises thereof under a single management, and enable a single

party or body of men acting as the Board of Directors of the said Northern Securities Company, or such Executive Committee as they may designate, to fix all rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of said companies within the State of Minnesota; to determine what trains shall be operated over each or any of the lines of railway of each of said railway companies, and to remove all competition in freight or passenger traffic over said parallel and competing lines, and prevent the building of lines into new territory as well as into the territory now reached by only one of said lines of railway; that the purpose of said agreement and of the parties thereto was the creation of a trust or the formation of a combination by which a monopoly of railway traffic in Northern Minnesota and elsewhere will be perfected; that the defendant company was organized for, and is to be used as a medium through and by which this unlawful agreement, purpose and object can, and, if not enjoined, will be accomplished; that this agreement and the consummation thereof is in restraint of trade, tends to create a monopoly in railway traffic and is against public policy, and void. 79

That the holders of a large majority of the capital stock of both said Great Northern and Northern Pacific Railway Companies had knowledge of, consented to, and assisted in carrying out the agreement, arrangement and scheme herein set forth by which a large majority of the capital stock of each of said Railway Companies was to be exchanged for the capital stock of said Northern Securities Company upon the basis and for the purposes herein set forth; and the said stockholders of said Great Northern and Northern Pacific Railway Companies so consenting to, taking part and assisting in the formation of said Northern Securities Company and the perfecting of the agreement and scheme herein set forth, constitute all of the stockholders of said Northern Securities Company; and the Board of Directors and executive officers of said Northern Securities Company hereinafter named have been selected from and elected by such stockholders of said Great Northern and Northern Pacific Railway Companies. 80 81

That under the Articles of Association of said Northern Securities Company, its corporate powers and entire business management is vested in a Board of Directors consisting of such number, as shall be fixed from time to time, by the by-laws of said corporation, and the Board of Directors itself is authorized to make such

by-laws as it deems best, and from time to time, to alter, amend or repeal any by-laws. That the Board of Directors of said company thereby has power to determine its own number, and to adopt rules and regulations for its own conduct and the conduct of the affairs of said corporation. The Articles of Association further
82 provide that said Board of Directors may appoint an Executive Committee in the manner provided by the by-laws of the Company, which committee shall exercise all the powers and duties of said Board of Directors.

That on or about the 14th day of November, A. D., 1901, the following named persons were elected as and now constitute the Board of Directors of said Northern Securities Company, to-wit: For the term of one year, James J. Hill, George F. Baker, Daniel S. Lamont, James Stillman and N. Terhune; for the term of two years, Samuel Thorne, Charles E. Perkins, Jacob H. Schiff and William P. Clough; for the term of three years, John S. Kennedy, D. Willis James, E. T. Nichols, Robert Bacon and E. H. Harriman. That on the 15th day of November, A. D., 1901, said Board of Directors met and elected the following executive officers of said
83 Company, to-wit: President, James J. Hill; First Vice-President, John S. Kennedy; Second Vice-President, George F. Baker; Third Vice-President, D. Willis James; Fourth Vice-President, William P. Clough; Secretary and Treasurer, E. T. Nichols.

Complainant further alleges that said James J. Hill and said William P. Clough were on said last named date the President and Vice-President respectively of said Great Northern Railway Company; and both were members of the Board of Directors of said last named Company. That said E. T. Nichols was on said date and now is the Secretary and Assistant Treasurer of said Great Northern Railway Company. That said James J. Hill, and his said associates, either own or have in their possession or under their control a large majority
84 of the capital stock of said Great Northern Railway Company. That said James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, D. Willis James, John S. Kennedy, D. S. Lamont and James Stillman were on said 14th day of November, 1901, and now are members of the Board of Directors of said Northern Pacific Railway Company, and constitute a majority of the Board of Directors of said named Company.

That said James J. Hill and his associate directors and officers

of said Northern Securities Company own and control a majority of the capital stock of said last named Company; that during the month of December, 1901, said Northern Securities Company, through its directors and executive officers, began dictating the policy and management of said Northern Pacific as well as said Great Northern Railway Company, and ever since has been and now is directing and managing the business and property of both 85
said Great Northern and Northern Pacific Railway Companies, and determining and enforcing freight and passenger rates on many of the lines of railway of said Companies in the State of Minnesota, together with the manner and means of handling the freight and passenger business of said companies on such lines of railway, and will continue so to do unless enjoined as herein prayed.

That said Northern Securities Company has no authorized agent or representative within the State of Minnesota, on whom a summons or other process in any legal proceeding may be served.

That the massing and concentration of said railway properties and the control and management thereof in the Defendant Company in the manner hereinbefore outlined, tends to and does 86
create a monopoly in railway traffic in the State of Minnesota, and tends to and does deprive the State of Minnesota and the citizens thereof of the privilege of competition in fixing charges and rates of transportation for a large amount of freight transported annually over the lines of railway of each of said railway companies, between stations upon the lines of railway of both said companies within the State of Minnesota.

That it has ever been a part of the settled and public policy of the State of Minnesota to prohibit therein, in any way, the consolidation in any manner of competing and parallel lines of railway; and to this end the Legislature of the State of Minnesota did, in the year 1874, pass the following enactment, which ever since has remained and now is a part of the Statute Law of the State of Minnesota, known as Chapter 29 of the General Laws of 1874, to- 87
wit:

"Section 1. No railroad corporation, or the lessees, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a

parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

88 Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 9, 1874."

That in the year 1881, the Legislature of the State of Minnesota passed the following enactment, which ever since has remained and now is a part of the Statute Law of the said State and known as Chapter 94 of the General Laws of 1881, to-wit:

"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line.

Sec. 4. This act shall take effect and be in force from and
89 after its passage.

Approved March 3rd, 1881."

That said Northern Securities Company is a Railroad Corporation within the meaning of the laws of the State of Minnesota; and the purpose, object and design of the said organizers and promoters of said Northern Securities Company, both in the organization thereof and in the making and carrying out of the said plans, agreement and designs hereinbefore referred to, was and is to violate the said legislative enactments of the State of Minnesota, and to evade and escape the provisions thereof; and it is the purpose, intent and design of said corporation, its stockholders, directors, executive committee, officers, agents and representatives, to violate the said legislative enactments, and to evade and escape the terms and provisions therof, and effect a consolidation of said
90 railway corporations and properties as herein alleged. That each and all the said acts are violations and evasions of the said Laws and the settled public policy of the State of Minnesota, and unless said parties are enjoined will cause the State of Minnesota irreparable injury.

That for many years last past it has been a part of the settled policy of the State of New Jersey to permit the consolidation of

only such lines of railroad as are or can be connected so as to form continuous lines of railroad, and not to permit the consolidation of parallel or competing lines; and to that end, in the year 1885, the Legislature of the State of New Jersey enacted a law which permits the consolidation of such lines as shall or may form connecting or continuous lines of railroad.

Your Oratrix is informed and believes, and upon information 91
and belief alleges, that defendant is not the owner of any property or stock or securities of any corporation, except as above set forth, and is not engaged in any business whatever except such as is incidental to the ownership of such stock and the general management and control of said Great Northern and Northern Pacific Railway Companies and the railway lines and properties thereof.

Your Oratrix further alleges that if the defendant is permitted to control and manage the affairs of said Great Northern and Northern Pacific Railway Company, in the manner hereinbefore alleged or otherwise, all competition between them will forever cease, and a monopoly in railway traffic in Minnesota be created, to the great and permanent and irreparable damage and injury to the State of Minnesota and to the people thereof, and in 92
violation of its laws.

That your Oratrix has and can have, no other adequate remedy or relief by action at law, or except as herein prayed for in equity.

To the end therefore, that the defendant, the Northern Securities Company may, if it can, show cause why your Oratrix should not have the relief herein prayed for, and that it may be compelled to answer all and singular the premises, and all matters and things herein stated, as fully and particularly as if they were here again repeated, and said company thereunto interrogated, and that the defendant may be required to answer without oath, its answer under oath being hereby expressly waived; and that the defendants may by the decree of this court be perpetually enjoined and restrained:

First: From voting at any meeting of the stockholders of either 93
said Great Northern or Northern Pacific Railway Company any of the capital stock of either of said companies by any means or in any manner whatsoever, and from attending, by reason of such ownership, possession or control of stock, either through its officers or by proxy, or in any other manner, any meeting of the stockholders of either of said companies.

Second: That the defendant, its stockholders, officers, directors, or the executive committee thereof, its attorneys, representatives, agents or servants, and each of them, be enjoined and restrained from in any way aiding, advising, directing, interfering with or in any way taking part, directly or indirectly, in any manner whatsoever, in the management, control or operation of any of the lines
94 of railway of either of said companies; or in the management or control of the affairs of either of said companies.

Third: That the said defendant, its officers, attorneys, representatives, agents or servants, including its Board of Directors, or any of its members as such, be enjoined and restrained from exercising any of the powers or performing any of the duties, or in any manner acting as a representative, officer, member of the Board of Directors or employe, of either said Great Northern or Northern Pacific Railway Company, or in any way exercising any management, direction, or control over the same.

Fourth: That said defendant, its stockholders, directors, and other officers, representatives and agents, be enjoined and restrained from doing any and all acts and making any arrangements or combinations by contract or otherwise having for their object, effect or result the consolidation or establishment of a joint man-
95 agement or control in any manner whatsoever of the said Great Northern and Northern Pacific Railway Companies, their lines of railway or properties.

Fifth: That the said defendant be enjoined from either directly or indirectly holding, owning or controlling any of the stock of either of said companies at one and the same time for any of the purposes or objects alleged in said bill, or otherwise.

Sixth: That in case it shall appear upon the hearing that the defendant owns or controls, or is acting in concert with the owners of, a majority of the capital stock of either of said railway companies, and owns or controls a minority of the stock of the other of said companies, then that the defendant, its officers, directors, agents, or representatives, be enjoined and restrained from receiving, acquiring or controling any additional capital stock of such
96 other railway company.

Seventh: And your Oratrix further prays the leave of this Court to amend this its bill of complaint, if amendment thereto shall become necessary, including the right to bring in other parties defendant for the purpose of giving force and effect to any decree that may be made by the Court herein.

And that Complainant be granted such other and further or different relief as the nature of this case may require, and as shall be agreeable to equity and good conscience.

MAY IT PLEASE YOUR HONORS: To grant unto your Oratrix a writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendant, the Northern Securities Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, and a citizen of the State of New Jersey as herein alleged, strictly commanding said defendant under a certain penalty, and on a cer- 97
tain day therein to be named, to be and appear before this Honorable Court to stand and abide by such order and decree as this Honorable Court may make in the premises. And to this end your Oratrix will ever pray.

WALLACE B. DOUGLAS,
Attorney General, State of Minnesota,
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

UNITED STATES OF AMERICA,)
State of Minnesota, (
DISTRICT OF MINNESOTA,)

Wallace B. Douglas, being duly sworn, upon oath says, he is 98
the Attorney General of the State of Minnesota, and that he has resided in the State of Minnesota during the past eighteen years; that he is well acquainted with the facts and circumstances set forth in the foregoing bill of complaint; that he has read the same and knows the contents thereof and that the same is true of his knowledge, except as to matters therein stated upon information and belief, and as to such matters he is informed and believes the same to be true.

.....

Subscribed and sworn to before me
this ..... day of January, A. D., 1902.

.....
Notary Public, Ramsey County, Minnesota.

99

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY,

Defendant.

SUGGESTIONS IN SUPPORT OF MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

W. B. DOUGLAS,
Attorney General,
Solicitor for Complainant.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA, Complainant.

vs.

NORTHERN SECURITIES COMPANY, Defendant.

IN EQUITY.

Now comes the complainant, the State of Minnesota, by Wallace B. Douglas, its Attorney General, and moves the Court for leave to present and file the accompanying bill of complaint.

WALLACE. B. DOUGLAS,
Attorney General
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY,

Defendant.

IN EQUITY.

SUGGESTIONS IN SUPPORT OF MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

Statement of Facts.

For a number of years past, the following provisions have been in force as a part of the statute law of the State of Minnesota, to-wit:

Chapter 29, General Laws 1874:

"Section 1. No railroad corporation, or the lessee, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

"Sec. 2. This act shall take effect and be in force from and after its passage.

"Approved March 9, 1874."

Chapter 94, General Laws 1881:

"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other

railroad corporation or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing line.

"Sec. 4. This act shall take effect and be in force from and after its passage.

"Approved March 3, 1881."

Chapter 359, General Laws 1899:

"Section 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits, or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

"That when any corporation heretofore or hereafter created, organized or existing under the laws of this state, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this state, or of the several states, such union, combina-

tion, agreement, arrangement, or contract is hereby prohibited and declared to be unlawful.

"Sec. 3. Any coporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state. * * *

"Sec. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and *it is hereby declared to be the duty of the attorney general*, to institute, *in the name of the state*, proceedings in any court of competent judisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. * * *

"Sec. 8. This act shall take effect and be in force from and after its passage.

"Approved April 21, 1899."

Said General Laws of 1874 and 1881, respectively, were before this Court in 1895, and held to be constitutional enactments of the State of Minnesota, and applicable to said Great Northern Railway Company.

See Pearsall vs. G. N. Ry. Co., 161 U. S. 646.

In that case the plaintiff in error, a stockholder of the Great Northern Railway Company, brought his suit to enjoin the consolidation of the Great Northern Railway Company with the Northern Pacific Railway Company, the two corporations referred to in the bill of complaint in this case. The Attorney General of the State of Minnesota, by leave of this Court, filed a brief in intervention, and such attempted consolidation was held to be in violation of the Laws of the State of Minnesota above referred to.

From the bill of complaint it appears that the defendant the Northern Securities Company, is a corporation created on the 13th day of November, A. D. 1901, under and by virtue of the laws of the State of New Jersey, and is a citizen of the State of New Jersey, and by its Articles of Incorporation, is authorized to

"acquire by purchase, subscription or otherwise, and to hold * * * any shares of capital stock created or issued by any other corporation or corporations of the State of New Jersey or of any other state, territory or country," and while the owner of such stock, to "exercise all the rights, powers and privileges of ownership including the right to vote thereon;" also, "*to aid in any manner any corporation or association of which any bonds or other securities or evidences of stock are held by such corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or any securities or evidences of indebtedness or stock.*"

It also appears from the bill of complaint that the Northern Securities Company was organized at the instigation and under the direction and control of the President and Vice President of said Great Northern Railway Company, acting in concert with the owners of a majority of the stock of said last named company, as well as with the holders of a majority of the stock of said Northern Pacific Railway Company. That prior to the organization of said Northern Securities Company the holders of a majority of the stock of said Great Northern and Northern Pacific Railway Companies respectively, and acting in concert with each other and the President of said Great Northern Railway Company, as well as the prospective officers and Board of Directors of said Northern Securities Company, agreed with each other to transfer to said Northern Securities Company, in exchange for its capital stock, upon an agreed basis of exchange, a large majority of the capital stock of said Great Northern and Northern Pacific Railway Companies respectively. That said Northern Securities Company was organized for the purpose and with the intention of effecting, and in order to effect, a consolidation of said Great Northern and Northern Pacific Railway Companies, together with their railway lines and properties. That the compact or agreement above referred to was entered into with the design and purpose of evading and violating the Laws of the State of Minnesota herein referred to; and for the purpose of creating a monopoly in railroad traffic, as well as to consolidate the parallel and competing lines of railway owned by each of said railway companies in the State of Minnesota, and the lines of railway extending westward therefrom to the Pacific Coast; thus placing the complete management and control of all of the railway lines of each of said companies, and the power to fix and regulate charges for freight and passengers, in a single man or body of men acting

as the executive head, or executive committee, of said Northern Securities Company. That after the incorporation of the Northern Securities Company the agreement above referred to was consummated by the delivery to the defendant of upwards of three-fourths of the capital stock of each of said railway companies.

It also appears that a Board of Fifteen Directors was elected by the stockholders of the Northern Securities Company, on or about the 14th day of November, A. D. 1901, and consists, with three exceptions, of the members of the Board of Directors of either said Great Northern or Northern Pacific Railway Companies. It also appears from the bill of complaint that a majority of the Directors of the Northern Pacific Railway Company were elected and thereafter qualified and are now acting as members of the Board of Directors of the said Northern Securities Company; and that the President of said Company was and now is the President of the said Great Northern Railway Company.

The proprietary interest under which the State of Minnesota claims the right to maintain this action, is set forth in said bill of complaint in paragraphs III. and IV. The bill also sets forth fully the grounds upon which the State claims the right to maintain this action by virtue of its sovereign powers for and in behalf of the citizens of the State; and the bill then prays for an injunction upon the several grounds set forth therein.

Points and Authorities.

The complainant bases its request for leave to file and present its bill of complaint upon Section 2 of Article III. of the Constitution of the United States, which grants original jurisdiction to this Court in all controversies between states and between a state and a citizen of another state; and also upon congressional enactment relating thereto, and found at Section 687, et seq. Revised Statutes of United States.

The right of a state to invoke the jurisdiction of this Court, to protect rights of a proprietary nature, in an action against citizens of sister states has long been at rest. There is, therefore, as we view the question, but one inquiry to be considered bearing on the question of jurisdiction, to-wit: Is the State of Minnesota so far interested, either in its individual or in its sovereign capacity, as to enable it to maintain this action in any court?

It appears from the bill of complaint, at paragraphs III. and IV., that the State of Minnesota owns upwards of three million acres of land within its limits, which is near to, or in the territory, alone traversed by the two railways in question; and that the State is dependent almost entirely upon those roads for the development

of this land, and the furnishing of transportation facilities to the same. That the value of these lands, and their salability will be greatly impaired by the consolidation referred to in the bill of complaint. It further appears that the State owns and maintains a State University, five normal schools, schools for the deaf, dumb, blind and feeble-minded, a State Training School, a school for dependent children, five hospitals for the insane, a State Prison and a State Reformatory; and necessarily pays a large amount of money annually to the two railroad companies whose properties are sought to be consolidated, for transporting supplies to such institutions, as well as for conveying inmates to and from such penal and charitable institutions. It further appears that the income of the State derived from taxation, for the maintenance of these institutions, as well as the performance of its executive, legislative and judicial functions, will be seriously impaired and interfered with by reason of such consolidation.

We, therefore, submit that the State of Minnesota is so far interested, in its individual capacity, in the subject matter of this action as to entitle it to maintain the same.

See Pennsylvania vs. Wheeling Bridge Co., 13 How. 519.

The Sate also claims the right to maintain this action in its sovereign capacity upon the ground that the acts charged in the bill are in violation of the rights of, and a direct injury to all of the people of the State; and upon the further ground that the controversy involves a violation of a remedial and constitutional enactment of the State, which the State is charged with the duty of enforcing.

This action falls clearly within the principles, as well as the philosophy, of Missouri vs. Illinois, and Sanitary District of Chicago, 180 U. S. 258; Debbs, Petitioner, 158 U. S. 656; Kentucky vs. L .and N. Ry. Co., 161 U. S. 677; and Ohio Oil Co. vs. Indiana, 177 U. S. 190.

The present action is clearly distinguishable from Louisiana vs. Texas, 176 U. S. 19. It has been repeatedly held, in cases where a state has invoked the jurisdiction of other courts, that a state is the proper party to institute and prosecute, in its sovereign capacity, actions involving enforcement of its remedial statutes, where all or a large portion of the citizens of such state are affected by the violation of the law or have an interest in its enforcement; and that it is the right as well as the duty of the state to maintain such an action independent of a property or individual interest.

See Indiana vs. Ohio Oil Co., 150 Ind. 21;

(Same case, 47 L. R. A., 630);

Stockton, Atty. Gen., vs. Cent. Ry. Co. of N. J., 50 N. J. Eq. 52;

Atty. Gen. vs. R. R. Co., 35 Wis. 425;
Kentucky vs. L. & N. Ry. Co., 97 Ky. 675;
G. C. & F. S. Ry. Co. vs. State, 72 Tex. 404.

The cases of Kentucky vs. L. & N. Ry. Co., and Indiana vs. Ohio Oil Co., supra, involved an issue directly in point with the case at bar. Both those decisions were affirmed by this Court, and by implication, at least, the seal of approval was placed upon the principle involved.

Briefly stated, the attempted consolidation of the railway lines and properties of the Great Northern and Northern Pacific Railway Companies, which was defeated in the case of Pearsall vs. Great Northern Ry. Co., is now renewed by the united action of the holders of a majority of the stock of each of said companies, by placing a majority of the capital stock of each of said railway companies in the Northern Securities Company, in order that the last named company may manage and control, through its president or executive committee, all of the railway lines and properties of each of said railway companies. This action against the Northern Securities Company is brought to reach the instrument or means through and by which these two railway companies are to be consolidated, and involves an inquiry into the extent of the powers of the Northern Securities Company, and the lawfulness of its acts. Or, stated in a more direct form, the principal question raised in this action is: Can a corporation, organized under the Laws of New Jersey, use its corporate powers so as to violate or overthrow the constitutional enactment of a sister state, and thus accomplish indirectly that which this Court has held cannot be done directly; especially in view of the fact that the New Jersey corporation was organized for the express purpose of accomplishing this result.

The further question is presented, viz: Does not the consolidation of these railway companies, which own and operate all the railway lines situated in the northern half of Minnesota (except two short iron ore carriers) amount to a monopoly in railroad traffic? And is not such a monopoly the subject of challenge regardless of statutory prohibition? either State or national

We respectfully submit that the importance of the issues warrants the submission of the questions involved to this Court, which has final, and, as we believe, original jurisdiction.

W. B. DOUGLAS,
Attorney General,
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY,

Defendant.

COMPLAINANT'S BRIEF ON MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

W. B. DOUGLAS,
Attorney General,
Solicitor for Complainant.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA, Complainant,

vs.

NORTHERN SECURITIES COMPANY, Defendant.

IN EQUITY.

Now comes the complainant, the State of Minnesota, by Wallace B. Douglas, its Attorney General, and moves the Court for leave to present and file the accompanying bill of complaint.

WALLACE B. DOUGLAS,
Attorney General
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA, Complainant.

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NORTHERN SECURITIES COMPANY, Defendant.

IN EQUITY.

BRIEF ON MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

Statement of Facts.

For a number of years past, the following provisions have been in force as a part of the statute law of the State of Minnesota, relating to Railroad Corporations, to-wit:

Chapter 29, General Laws 1874:

"Section 1. No railroad corporation, or the lessee, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

"Sec. 2. This act shall take effect and be in force from and after its passage.

"Approved March 9, 1874."

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"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing line.

"Sec. 4. This act shall take effect and be in force from and after its passage.

"Approved March 3, 1881."

Said General Laws of 1874 and 1881, respectively, were before this Court in 1895, and held to be constitutional enactments of the State of Minnesota, and applicable to said Great Northern Railway Company.

See Pearsall vs. G. N. Ry. Co., 161 *U. S.* 646.

In that case the plaintiff in error, a stockholder of the Great Northern Railway Company, brought his suit to enjoin the consolidation of the Great Northern Railway Company with the Northern Pacific Railway Company, the two corporations referred to in the bill of complaint in this case. The Attorney General of the State of Minnesota, by leave of this Court, filed a brief in intervention, and such attempted consolidation was held to be in violation of the Laws of the State of Minnesota above referred to.

From the bill of complaint it appears that the defendant, the Northern Securities Company, is a corporation created on the 13th day of November, A. D. 1901, under and by virtue of the laws of the State of New Jersey, and is a citizen of the State of New Jersey, and by its Articles of Incorporation, is authorized to "acquire by purchase, subscription or otherwise, and to hold * * * any shares of capital stock created or issued by any other corporation or corporations of the State of New Jersey or of any other state, territory or country," and while the owner of such stock,

to "exercise all the rights, powers and privileges of ownership including the right to vote thereon;" also, "*to aid in any manner any corporation or association of which any bonds or other securities or evidences of stock are held by such corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or any securities or evidences of indebtedness or stock.*"

It also appears from the bill of complaint that the Northern Securities Company was organized at the instigation and under the direction and control of the President and Vice President of said Great Northern Railway company, acting in concert with the owners of a majority of the stock of said last named company, as well as with the holders of a majority of the stock of said Northern Pacific Railway Company. That prior to the organization of said Northern Securities Company the holders of a majority of the stock of said Great Northern and Northern Pacific Railway Companies respectively, and acting in concert with each other and the President of said Great Northern Railway Company, as well as the prospective officers and Board of Directors of said Northern Securities Company, agreed with each other to transfer to said Northern Securities Company, in exchange for its capital stock, upon an agreed basis of exchange, a large majority of the capital stock of said Great Northern and Northern Pacific Railway Companies, respectively. That said Northern Securities Company was organized for the purpose and with the intention of effecting, and in order to effect, a consolidation of said Great Northern and Northern Pacific Railway Companies, together with their railway lines and properties, by means of and through said Northern Securities Company. That the compact or agreement above referred to was entered into with the design and purpose of evading and violating the Laws of the State of Minnesota herein referred to; and for the purpose of creating a monopoly in railroad traffic, as well as to consolidate the parallel and competing lines of railway owned by each of said rail-

way companies in the State of Minnesota, and the lines of railway extending westward therefrom to the Pacific coast; thus placing the complete management and control of all of the railway lines of each of said companies, and the power to fix and regulate charges for freight and passengers, in a single man or body of men acting as the executive head, or executive committee, of said Northern Securities Company. That after the incorporation of the Northern Securities Company the agreement above referred to was consummated by the delivery to the defendant of upwards of three-fourths of the capital stock of each of said railway companies. That defendant is now exercising the right of ownership and managing said railway properties and fixing freight and passenger rates on the lines of railway owned by said companies in Minnesota.

It also appears that a Board of Fifteen Directors was elected by the stockholders of the Northern Securities Company on or about the 14th day of November, A. D. 1901, and consists, with three exceptions, of the members of the Board of Directors of either said Great Northern or Northern Pacific Railway Companies. It also appears from the bill of complaint that a majority of the Directors of the Northern Pacific Railway Company were elected and thereafter qualified and are now acting as members of the Board of Directors of the said Northern Securities Company; and that the President of said company was and now is the President of the said Great Northern Railway Company.

The proprietary interest under which the State of Minnesota claims the right to maintain this action, is set forth in said bill of complaint in paragraphs III. and IV. The bill also sets forth fully the grounds upon which the State claims the right to maintain this action by virtue of its sovereign powers for and in behalf of the citizens of the State; and the bill then prays for an injunction upon the several grounds set forth therein.

POINTS AND AUTHORITIES.

I.

The complainant bases its request for leave to file and present its bill of complaint upon Section 2 of Article III. of the Constitution of the United States, which grants original jurisdiction to this Court in all controversies between states and between a state and a citizen of another state; and also upon congressional enactment relating thereto, and found at Section 687, et seq. Revised Statutes of United States.

The right of a state to invoke the jurisdiction of this Court, to protect its property and individual rights and interest, in an action against citizens of sister states has long been recognized.

It appears from the bill of complaint, at paragraphs III. and IV., that the State of Minnesota owns upwards of three million acres of land within its limits, which is near to, or in the territory, alone traversed by the two railways in question; and that the State is dependent almost entirely upon those roads for the development of this land, and the furnishing of transportation facilities to the same. That the value of these lands, and their salability will be greatly impaired by the consolidation referred to in the bill of complaint. It further appears that the State owns and maintains a State University, five normal schools, schools for the deaf, dumb, blind and feeble-minded, a State Training school, a school for dependent children, five hospitals for the insane, a State Prison and a State Reformatory; and necessarily pays a large amount of money annually to the two railroad companies whose properties are sought to be consolidated, for transporting supplies to such institutions, as well as for conveying inmates to and from such penal and charitable institutions. It further appears that the income of the State derived from taxation, for the maintenance of these institutions, as well as the performance of its executive, legislative and judicial

functions, will be seriously impaired and interfered with by reason of such consolidation.

It further appears from the bill that it has been a part of the settled policy of the State of Minnesota since its organization to develop the resources of the State by encouraging the building of railroads therein, by granting to railway companies large quantities of lands for the construction and maintenance of parallel and competing, as well as other lines of railway, within the State; that many millions of acres of lands, have been granted by the State of Minnesota to various companies as a consideration for building and maintaining parallel and competing lines of railway within the State, many of which railway lines are now owned or controlled by either the Great Northern or Northern Pacific Railway Company. We therefore submit that the State of Minnesota is so far interested, in its individual capacity, in the subject matter of this action as to entitle it to maintain the same.

See Pennsylvania vs. Wheeling Bridge Co., 13 *How.* 519, where the question of the State's right to maintain an action in this Court to enforce its individual or property interest is fully discussed, and the principle that a State can maintain such an action in this Court is announced.

II.

The State also claims the right to maintain this action as *parens patriae*, or as trustee or representative of all her citizens. The bill, at subdivisions III and IV, sets forth facts showing clearly that a very large portion, if not all, of the citizens of the State of Minnesota will be materially injured by the consolidation of, and the removal of competition in freight and passenger rates between, the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies, respectively. We take it this Court will assume that the citizens of the State generally will suffer material injury by the removal of competition in freight and passen-

ger rates within the State; that is the theory upon which the State of Minnesota was allowed to intervene and file a brief in the case of *Pearsall vs. Great Northern Railway Company, supra;* and it is the fundamental principle upon which the case of *L. & N. Ry. Co. vs. Kentucky*, 161 *U. S.* 677, was decided, as well as

U. S. vs. Mo. Traffic Assn., 166 *U. S.* 290; *and*
U. S. vs. Joint Traffic Assn., 171 *U. S.* 505;

Presumably it was in recognition of this principle that Congress adopted the anti-trust law under which the last two cases referred to were brought. It is in recognition of this same principle that all of the anti-trust laws of the various states have been adopted, and, in fact, this is the basic principle of all of the decisions holding common law monopolies invalid and against public policy. Such being the case, we contend that it is not only the right, but the duty, of the State to prosecute this action in behalf of the citizens of the State.

A state is defined by Vattel as being, "a body politic or society of men united together for the purpose of promoting their mutual safety and advantage by joint effort of their combined strength." This definition holds good as to the States composing the Union with such limitations as may be imposed by the Federal Constitution. Thus, in effect, a suit brought by a state, as the representative of the people, is a suit brought by the people themselves in their collective capacity through and by means of the state; because a state in its municipal capacity is but a collection of all of the citizens of that state, and the state in its governmental capacity is the means or instrument by which the people in their sovereign capacity exercise their rights. We understand it to be upon this theory that a state is permitted to act for and on behalf of its citizens.

In re Debbs, 158 *U. S.* 564, this Court uses the following language:

"While it is not the province of the Government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large and are in respect of matters which by the Constitution are intrusted to the care of the nation, and concerning which the nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts or to prevent it from taking measures therein to fully discharge those constitutional duties."

It is as much a part of the duty of a state, in its sovereign or governmental capacity, to secure to its citizens their common rights, as it is of the United States to use its sovereign powers in behalf of its citizens for a similar purpose. And if we understand the case of *Missouri vs. Illinois and Chicago District*, 180 *U. S.* 208, correctly it was in recognition of this principle that the Court took jurisdiction in that case. In that case *Justice Shiras* used the following language:

"An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this Court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering.

The allegations of the bill plainly present such a case. The health and comfort of the large communities inhabiting those parts of the State situated on the Mississippi River are not alone concerned, but contagious and typhoidal diseases introduced in the river communities may spread themselves throughout the territory of the State. Moreover substantial impairment of the health and prosperity of the towns and cities of the State situated on the Mississippi River, including its commercial metropolis, would injuriously affect the entire State.

That suits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate and disproportionate remedies, requires no argument."

In the rendition of the decision just quoted from, this Court has so completely and comprehensively reviewed all of its decisions relating to the question of original jurisdiction of this Court that we deem it unnecessary to make further reference to them, beyond calling attention to that case.

The sole ground upon which the State of Kentucky claimed the right to maintain the action brought by it against the Louisville & Nashville Ry. Co., as well as one of the principal grounds upon which the State of Indiana claimed the right to maintain the action brought by it against the Ohio Oil Company, was as the representative of the interests of the citizens of those respective states.

See Kentucky vs. L. & N. Ry. Co., 97 *Ky.* 675;
Indiana vs. Ohio Oil Co., 150 *Ind.*, 21.

Both of the above cases subsequently came before this Court, and the decision of the State Supreme Court in each case was affirmed.

See L. & N. Ry. Co. vs. Kentucky, 161 *U. S.* 677;
Ohio Oil Co. vs. Indiana, 177 *U S.* 190.

In *Attorney General vs. Delaware & B. B. R. Co.*, 27 *N. J. Eq.* 631, the following language is used:

"In equity, as in the law court, the attorney general has the right, in cases where the property of the sovereign or the interests of the public are directly concerned, to institute suit by what may be called 'civil information,' for their protection. The State is not left without redress in its own courts, because no private citizen chooses to encounter the difficulty of defending it, but has appointed this high public officer, on whom it has cast the responsibility, and to whom, therefore, it has given the right of appearing in its behalf, and invoking the judgment of the Court on such questions of public moment."

Prof. Pomeroy, in section 1093 of his work on Equity Jurisprudence, states the rule in this language: "When the managing body are doing, or are about to do, an *ultra vires* act of such a nature as to produce public mischief, the attorney general, as the representative of the public and of the government, may maintain an equitable suit for preventive relief."

In the case of *Attorney General vs. Railroad Co.'s*, 35 *Wis.* 524, it was said: "The equitable jurisdiction precludes the objection that there is an adequate remedy at law. It admits the remedy at law, but administers its own remedy in preference, when the state seeks it in preference. It seems to proceed on the presumption that it may better serve the public interest to restrain a corporation than to permit it by penal remedies, or to forfeit its charter; and that, in that view, the proper officers of the state should have an election of remedies. And we may as well say in this connection that the jurisdiction to entertain these informations is wholly independent of an adequate remedy at law and that, were that otherwise, we could not consider the informations in the nature of a quo warranto, pending in this Court against these defendants, as an adequate remedy at law, which could be a substitute for or bar to the injunction asked. Judgments of ouster on those informations might not only be of far more grave consequence to the defendants, but might be far less beneficial to the state, and less accordant with

its policy, and altogether less equitable and proper, than the injunction sought to restrain the defendants from doing what is alleged to work a forfeiture of their charters."

In rendering its decision in the case of *Stockton vs. Central Ry. Co. of New Jersey*, 50 *N. J. Eq.* 52, (same case, 24 Atl. 964), the Court of Chancery of New Jersey reaffirmed the decision in the case of *Attorney General vs. Delaware & B. B. R. Co., supra*, and added: "It is well settled that where a corporate excess of power tends to the public injury or to defeat public policy, it may be restrained in equity at the suit of the Attorney General on behalf of the state."

In the case of *Trust Company of Georgia vs. State of Georgia* 48 *L. R. A.* 520, the Supreme Court of Georgia, after an exhaustive review of the authorities, summarize their conclusion as follows:

"Our conclusion, therefore, both from reason and a decided weight of authority, is that the State in its sovereign capacity can appeal to the courts for relief by injunction whenever either her property is involved or the public interests are threatened and jeopardized by any corporation, especially one of a public nature like a railroad company seeking to transcend its powers and to violate the public policy of the State."

See also G. C. & F. S. Ry. Co. vs. State, 72 *Texas*, 404;
Commonwealth vs. Pittsburg & C. R. Co., 58 *Pa.* 45;
Pennsylvania R. R. Co. vs. Commonwealth, 7 *Atl.* 374.

We do not wish to be understood as asserting that a State can maintain an action to enjoin all *ultra vires* acts or violations of law by corporations. What we do assert is, that wherever the State has a property or individual interest which is damaged by such act, it can maintain a suit to enjoin the same; or where such act results in injury to the public, or a large number of the citizens of the

State, then the State can maintain an action to enjoin the same as *parens patriae* or representative of the public welfare of her citizens. And we contend that both of these conditions exist in this case, and that the State of Minnesota has a right to maintain this action in this Court against the Northern Securities Company to determine that question.

III.

It may be urged by the other side that this court cannot entertain jurisdiction of this case for the reasons stated in the case of *Wisconsin vs. Pelican Insurance Company*, 127 *U. S.* 265. It seems to us at the outset that such a claim cannot be urged in opposition to an application for leave to file this bill; that whether or not the State of Minnesota has a right to enforce its claim against the Northern Securities Company is one of the questions the State is entitled to have this Court determine upon a full hearing; and such a question can not be fully heard and disposed of until this Court permits the State's bill to be filed, and thereafter passes upon the question or controversy either on a demurrer to the bill or upon issues joined. In case, however, the Court should differ with this contention, we will briefly state some of the reasons why the case of *Wisconsin vs. Pelican Ins. Co.* is not applicable to the one now presented.

The case of *Wisconsin vs. Pelican Ins. Co.* was an action to enforce the recovery by the state of a penalty imposed as a punishment for the violation of one of its penal statutes; and the doctrine that "the courts of no country execute the penal laws of another" was adopted and applied.

The statutes of the State of Minnesota referred to in the bill now under consideration, and the enforcement of which form a partial basis for the relief sought, are in no sense penal statutes; they provide no punishment for their violation, but their violation cre-

ates a cause of action in favor of three different classes of individuals or persons: (1) The stockholder of any railroad corporation seeking to consolidate with another in violation of the act, would have a cause of action against such corporation. *See Pearsall vs. Great Northern Ry.*, 161 *U. S.* 646. (2) Any individual or class of citizens in the State suffering special injury by reason of such violation, would have a cause of action to enjoin the same; this includes the state in its individual capacity; and (3) the State of Minnesota, acting as the representative of all of the people of the State, has the right to maintain such an action to enjoin the violation of these statutes.

In Huntington vs. Attrill, 146 *U. S.*, 657, this Court exhaustively analyzes the difference between penal laws and remedial statutes, and in defining a penal law, uses this language:

"Penal laws, strictly and properly, are those imposing punishment for an offense committed against the State, and which by the English and American Constitutions, the executive of the State has the power to pardon. Statutes giving a private action against the wrong-doer are sometimes spoken of as penal in their nature but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal * * * * * * The test whether a law is penal in the strict and primary sense is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual according to the familiar classification of Blackstone."

And again in the same case, *Justice Gray* says: "The question whether a statute of one state, which in some respects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act."

The statutes of the State of Minnesota, set forth in this bill, are not only not penal, but we think form a part of the contract which gives the State the right to maintain this action both in its individual capacity as well as that of *parens patriae*. The stockholders of the two railway companies whose properties and lines are sought to be consolidated in the manner set forth in the bill, have been granted the right by the state of Minnesota to be, or to exist as, corporations within said State, and to exercise the right of eminent domain. It is a well settled principle of law that the public statutes of a state relating to a corporation become and are a part of the charter of a corporation created in or permitted to do business in such State; i. e., a part of the consideration which the State receives for granting the right to be a corporation and exercise the powers and privileges as such in the state is an agreement on the part of such corporation and its stockholders that it and they will observe the laws of the State relating to such corporation.

In *Supreme Lodge, K. P. vs. Weller*, 25 S. E., 891, the Supreme Court of Virginia announced this rule in the following language:

"It is not necessary that the general law should be copied in the charter; it forms an essential part of it and all parties are bound by its terms, whether copied in the charter or found only on the statute books."

The Supreme Court of Illinois in *People vs. Chicago Gas Co.*, 22 N. E., 798, uses this language:

"The charter of a corporation does not consist of the articles of association alone, but of such articles taken in connection with the law under which the organization takes place. The provisions of the law enter into and form a part of the charter."

It must be borne in mind that in addition to the statutes referred to in the bill prohibiting the consolidation, it is alleged that the State of Minnesota has contributed over ten million acres of land in order to secure the construction and maintenance of some of the parallel and competing lines owned by either the Great Northern or Northern Pacific Railway Company. A part of the consideration which the State received for the lands granted was the implied agreement on the part of such railroad corporations and their stockholders, that these lines of railway should be maintained and operated by such corporations as parallel and competing lines. As stated in the case of *State vs. Central Iowa R. R. Co.*, 32 N. W. 409: A railroad company having constructed and put in operation its road in part at least by public aid in the way of taxation it has no right to abandon its road or turn it over to another company to the injury of the state or any portion of the citizens.

A part of the statute law of the State of Minnesota relating to railroad corporations, as the bill sets forth, has been for nearly thirty years, that no consolidation in any manner whatever shall take place between parallel and competing lines of railway within the State; i. e., one of the conditions and considerations demanded by the State for the right to be a railroad corporation and to exercise the powers and privileges of such within the State is, that free and open competition in both freight and passenger rates shall exist between the lines of railway operated by such corporations; and the violation of these statutes is a violation of the contract rights or obligations of the corporation, as well as of the stockholders thereof with the state, and, as we contend, gives the State the right to maintain an action to enjoin such violation. The enforcement of such a statute is the enforcement of a remedial statute, or a statute which gives the right to the State in its individual capacity, as well as in its capacity as the representative of its citizens, to maintain this action in any court of competent jurisdiction. It seems to us that this action and the right to maintain it comes

clearly within the case of *Huntington vs. Attrill, supra.* As stated by *Justice Gray* in that case, wherever, by either the common law or the statute law of a state, a right of action has become fixed, the enforcement of such action may be pursued in any court which has jurisdiction of such matters, and can obtain jurisdiction of the parties.

In discussing the right to maintain an action for the violation of a statute outside the state adopting the same, *Justice Gray* in the same case, uses this language: "By our law a private action may be maintained in one state, if not contrary to its policy, for such a wrong done in another and actionable there, although a like wrong would not be actionable in the state where the suit is brought."

In passing, it should be noted, that the State of Minnesota in attempting to enforce its statutory right and remedy by means of this action, is not asking this Court to enforce anything contrary to the declared public policy of New Jersey or of the National Government. The declared public policy of New Jersey and the United States is against the consolidation and unification of competing lines of railway, and the removal of competition in freight and passenger rates. This policy is declared in the so-called "Anti-trust Law" of the U. S., which has been before this Court on several occasions; notably in *U. S. vs. Missouri Traffic Assn.*, 166 *U. S.* 290, and *U. S. vs. Joint Traffic Assn.*, 171 *U. S.* 505.

The right to maintain a cause of action created by statute, or which arises by reason of the violation of a statute other than a strictly penal law, has been recognized by this court and discussed at length in the cases of *Dennick vs. R. R. Co.*, 103 *U. S.*, 11; *Texas and P. Ry. Co. vs. Cox*, 145 *U. S.*, 593; and *Huntington vs. Attrill*, 146 *U. S.*, 657, to which latter case reference has already been made, and in which cases the review by this Court of the various decisions is so exhaustive and the distinctions so clearly set forth that reference to other cases seems unnecessary. Several

of the states, since the rendition of the decision in the case of *Huntington vs. Attrill*, have changed their attitude and adopted the rule of Massachusetts and Maine.

This contract obligation to obey the laws of the State of Minnesota rests primarily upon the stockholders of the corporation; it is one of the conditions which the State demands of the persons about to form a corporation; it in effect says to them, "If you will obey the laws of the State relating to the corporation you wish to form, the State will permit you to organize as a corporation." As held by this Court in the case of *Memphis & L. R. Ry. Co. vs. Commissioners*, 112 *U. S.* 609, the franchise of being a corporation belongs to the stockholders. It logically follows that the obligation to obey the law is imposed in the first instance, and forever after remains, upon the stockholders of the corporation. That this contract is a binding one and cannot be escaped seems to us to be fully settled in the case of *Thomas vs. Ry. Co.*, 101 *U. S.* 71, speaking for the Court, *Justice Miller* said:

"That principle is that where a corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes, without the consent of the State, to transfer to others the rights and powers conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the State, and is void as against public policy. This doctrine is asserted with remarkable clearness in the opinion of this Court delivered by Mr. *Justice Campbell*, in the *York and Maryland Line Railroad Co. vs. Winans*, 17 *How.* 30. The corporation in that case was chartered to build and maintain a railroad in Pennsylvania by the legislature of that State. The stock in it was taken by a Maryland corporation, called the Baltimore and Susquehanna Railroad Company, and the entire management of the road

was committed to the Maryland company, which appointed all the officers and agents upon it, and furnished the rolling stock. In reference to this state of things and its effect upon the liability of the Pennsylvania corporation for infringing a patent of the defendant in error Winans, this Court said: 'This conclusion (argument) implies that the duties imposed upon the plaintiff by the charter are fulfilled by the construction of the road, and that by alienating its right to use, and its powers of control and supervision, it may avoid further responsibility. But those acts involve an overturn of the relations which the charter has arranged between the corporation and the community. Important franchises were conferred upon the corporation to enable it to provide facilities for communication and intercourse, required for the public convenience. Corporate management and control over these were prescribed, and corporate responsibility for their insufficiency provided as a remuneration to the community for their grant. The corporation cannot absolve itself from the performance of its obligations without the consent of the legislature. *Beman vs. Rufford*, 1 *Sim. N. S.* 550; *Winch vs. B. & L. Railway Co.*, 13 *L. & Eq.* 506."

See also *Gibbs vs. Baltimore Gas Co.*, 130 *U. S.* 396.

The stock of the Great Northern and Northern Pacific Railway Companies, the title to which is placed in the Northern Securities Company in the manner and for the purposes set forth in the bill, must be deemed to be held by the last named Company as though located in and subject to all the laws of the State of Minnesota; and every power sought to be exercised by it by virtue of such stockholding must be in harmony with and not in violation of the Laws of the State of Minnesota. The Northern Securities Company can exercise no power by reason of this stockholding, nor any management or control over the Great Northern and Northern Pacific Railway

Companies, which is in violation of or which tends to contravene the laws of the State of Minnesota.

(See in addition to cases cited above, *Bank of Agusta vs. Earle* 13 *Peters*, 519.)

The stockholders of a corporation, as well as the corporation itself, can perform no acts and make no contracts either within or without the State creating such corporation, except such as are authorized by its charter or some general law of the State relating to it. It follows as a necessary corollary, that a corporation, as well as its stockholders, can perform no act or make any contract or agreement which violates a remedial statute of a state creating such corporation.

The bill sets forth an act which provides, among other things, as follows:

"No railroad corporation or the lesee, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, *any other railroad corporation owning or having under its control a parallel or competing line.* * * * * * * No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control, any other railroad corporation, or any stock, franchises, rights or property thereof, which owns or controls a parallel or competing line."

It will be noticed that this statute prohibits not only the consolidation of the property and railway lines of competing companies, but it also prohibits the consolidation of the stock of such railway companies in any way whatever. This statute is a part of the general law of the State authorizing the formation of railroad corporations, and, as already stated, is an obligation or limitation which enters into and forms a part of the stockholders' contract with the State, and is therefore binding upon the defendant Northern Securities Company.

This company cannot complain of an enforcement of this contract obligation or the statutes set forth in the bill, because it claims to be a stockholder in these railway companies.

Laying aside for the time being the charge in the complaint that the Northern Securities Company is a part of a scheme and plan by which the holders of a majority of the stock of the Northern Pacific and Great Northern Railway Companies intend to effect a consolidation of the railway lines and properties of such companies, and was organized for this purpose only, and treating it as an absolute purchaser of these stocks, still the State would have the right to enforce these statutes and this contract obligation against it. The Northern Securities Company, as declared by its articles of incorporation, was organized to purchase the stock of railway companies in the State of New Jersey or *any other state in the Union* and to vote the same. From this it follows that any stock of a railway company acquired by it outside the State of New Jersey is subject to all obligations or limitations imposed upon such stock as well as the corporations issuing it.

See Pinney vs. Nelson, 22 Supreme Ct. Rept., 52.

But all of this enters more into the merit of the cause of action against the Northern Securities Company than it does into the question of jurisdiction, and we will not pursue it further at this time.

The situation of the State of Minnesota can be summarized as follows: The holders of a large majority of the capital stock of two railroad corporations authorized to construct and maintain lines within its limits, have organized a corporation in another state for the express purpose of consolidating the railway lines and property of such companies and evading and violating one of the laws of the State of Minnesota which bears directly upon and gives the State and its citizens certain rights and privileges in connection with the prop-

erty owned and controlled by the railroads thus sought to be consolidated.

The only way in which the State can reach such an evasion of its laws and enforce its rights is to bring an action in this Court against the instrument or means by which such consolidation is sought to be accomplished. If the State of Minnesota cannot avail itself of the original jurisdiction of this Court to enforce its rights, it cannot go into the State of New Jersey and ask the Courts of that State to enforce its rights, because the same reasons urged against the jurisdiction of this Court could be urged with equal force before the Courts of New Jersey.

As stated by this Court in the cases of *Missouri vs. Illinois, et al*, and *Louisiana vs. Texas, supra*, the State of Minnesota, in entering the Union, has surrendered its right to enter into any agreement or compact with another state, or to enforce its claims or protect its rights against a citizen of another state by any other means than through the peaceful halls of judicial tribunals. It now finds itself confronted with a flagrant and defiant attempt to violate its laws, invade its rights—as well as the rights of its citizens—and it comes before this Court, the constitutionally authorized tribunal to hear its claims and adjust its controversy with the citizen of another state, and ask the privilege of that jurisdiction.

As said, in effect, by *Alexander Hamilton, in No. 81 of the Federalist*, It would ill suit the dignity of the State to be denied this jurisdiction. In this connection we have no doubt this language of *Chief Justice Marshall* will recur to the minds of the Court: "As this Court has never grasped an ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon it." (*See Fisher vs. Cockerell*, 5 *Peters*, 259.) Also this language of Chief Justice Waite: "The evident purpose was to open, and keep open, the highest court of the nation for the determination, in the first instance, of suits involving a state, or a diplo-

matic or commercial representative of a foreign government." (*See Ames vs. Kansas*, 111 *U. S.* 649.)

The bill discloses that this consolidation embraces about seventeen thousand miles of railroad, furnishing nearly all the transportation facilities available to the people of seven different states of the Union, which seven states embrace more than one-fifth of the entire area of the United States, and nearly one-twelfth of its population.

While it is not a part of the duty of the State of Minnesota to enforce the rights of the citizens of any other state, and it does not seek to do so, we ask this Court to turn to those facts of which it has a right to take judicial notice, and it will learn that six of these seven states, through which these roads pass, have constitutional or statutory inhibitions similar to the one which the State of Minnesota now seeks to enforce in this action. We refer to this only for the purpose of disclosing the far reaching effect of this tremendous consolidation. If the State of Minnesota cannot maintain this action we fail to see how it is possible for any state to enforce remedial statutes adopted for the protection of the interests of its citizens, as well as to protect its individual rights.

If what is attempted to be done here can be successfully accomplished, the States of this Union are powerless to enforce such statutes. The National Government, under its present constitutional limitations, can enact no legislation which will protect state commerce and state traffic against such a monopolistic consolidation as is referred to in this bill. The only practical way the state can protect itself is by the adoption of legislation of the character sought to be enforced in this action, and the only tribunal in which that can be enforced under the circumstances disclosed in this bill, is the one to which we now appeal.

It seems to us that there is a controversy between the State of Minnesota and the defendant corporation—a citizen of the State of New Jersey—which, under the constitutional provision already referred to, entitles the State of Minnesota to the privilege of the

jurisdiction of this Court; in fact, this is the only judicial tribunal in which the State of Minnesota can well assert its claim and present its controversy against the defendant.

IV.

There is a further ground of complaint set forth in the bill, and that is that this consolidation tends to create a monopoly in railroad traffic within the State of Minnesota, and thus amounts to a common law nuisance, which the State is entitled to enjoin. In this connection it seems to us proper to urge the attention of the Court to the fact that the statutes referred to in this bill in one sense prohibit the creation of a nuisance; and the creation and maintenance by a citizen or citizens of another state of a nuisance which operates upon and affects the property of the citizens of the State making the complaint, entitles such state to enjoin the same, under the decision of *Missouri vs. Illinois, supra.*

The State will also urge, in case it is allowed to file its bill of complaint, that it is entitled to avail itself of the provisions of Section 26, Stat. 209, C. 647, being the National Anti-trust Law. All of these questions, however, necessitate a lengthy discussion and, in accordance with our view of the case, enter more into the merits of the controversy than into the question of jurisdiction, and should, therefore, not be discussed in connection with this motion, but rather be left for discussion and consideration after the bill is filed. There are many other questions entering into the relation of the Northern Securities Co. as a stockholder of the Great Northern and Northern Pacific Railway Companies with the State of Minnesota, as well as the obligations of the stockholders in such corporations, which have not been referred to in this brief for the same reason.

RECAPITULATION.

Recapitulating, some of the reasons upon which it is claimed this Court has jurisdiction of this controversy, as provided in Section 2 of Article III of the Federal Constitution, it is urged:

First. That the decision of this Court in *Missouri vs. Illinois, supra,* is practically conclusive upon the question that the State of Minnesota is the proper party to maintain such an action.

We insist that the principle involved is substantially identical, the only distinction being that in *Missouri vs. Illinois* the application was to enjoin an act affecting the public health, while in the case at bar, the application is to enjoin an act affecting the public purse as well as the public welfare.

Second. That the decisions of the courts of Texas, Wisconsin, New Jersey, Indiana and Kentucky, in the cases of *G. C. & F. S. Ry. Co. vs. State; Attorney General vs. Railway Co.; Stockton, Attorney General vs. Central Ry. Co.; Indiana vs. Ohio Oil Co.;* and *Kentucky vs. L. & N. Ry. Co.,* respectively, cited *supra,* determining that a State in its sovereign capacity may maintain an action in the State courts of a like nature affecting the general public welfare, while not conclusive upon this Court, are entitled to great weight. Actions in those cases were brought and maintained in the State courts of necessity, for the reason that the defendants were citizens of the State instituting the action. Attention is again called to the fact that the Kentucky and Indiana cases were affirmed by this Court.

Third. That this action is maintainable in this Court upon the ground that it appears from the bill of complaint, the State of Minnesota in its individual capacity has a proprietary interest.

Fourth. That the enactments of the State of Minnesota set forth in the bill of complaint prohibiting the consolidation of parallel and competing lines of railway, or the capital stock of railway companies owning such lines, must be read into and deemed a

part of the charter contract existing between the State and the two railway companies in question, and constitute an obligation between the stockholders of such railway companies and the State of Minnesota which entitles the State to maintain an action in this Court to enforce the provisions of these statutes.

Fifth. That the bill of complaint clearly charges that it is the purpose of the defendant to create and perpetuate a monopoly in railway traffic in Minnesota which amounts to a public nuisance, is against sound public policy and void. The maintenance and carrying out of this nuisance is sought to be enjoined.

Sixth. That the defendant was organized for the purpose of and is actually dictating the management of two parallel and competing lines of railway in Minnesota to the injury of the general public, as well as to the State of Minnesota in its individual capacity; and therefore this action which involves the extent of the powers and the lawfulness of the acts of the defendant, is a controversy between the State of Minnesota and the citizen of another State, and within the original jurisdiction of this Court.

Seventh. That the framers of the Constitution, and the people of the different states in adopting that instrument, designated in explicit terms a great forum in which controversies between a state and the citizen of another state may be determined; to restrict, by the construction of Section 2 of Article III, the jurisdiction of this Court so as to exclude a controversy of this character will, we respectfully submit, operate to deny to the State of Minnesota the right to present its controversy to any court in the Nation.

The State of Minnesota respectfully submits its motion for leave to file its bill of complaint in this Court, and asks that the same be granted.

WALLACE B. DOUGLAS,
Attorney General.

M. D. MUNN,
GEORGE P. WILSON,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1901.

ORIGINAL.

STATE OF MINNESOTA, *Complainant,*

vs.

NORTHERN SECURITIES COMPANY, *Defendant.*

BRIEF ON BEHALF OF DEFENDANT IN OPPOSITION TO APPLICATION FOR LEAVE TO FILE BILL OF COMPLAINT.

JOHN G. JOHNSON,
JOHN W. GRIGGS,
WILLIAM D. GUTHRIE,
Of counsel for defendant.

WASHINGTON, JANUARY 27, 1902.

[Supplemental note.]

Since this brief was prepared, and on the 24th of January, counsel for defendant received a printed copy of an amended or modified bill of complaint to be presented on behalf of the State of Minnesota, but no modification has been intimated of the printed suggestions filed in support of the original bill. The principal change in this amended bill seems to be the omission of the Minnesota Anti-Trust Act of 1899. As it is not entirely clear that this act is abandoned as a basis of the alleged cause of action, and as there is not sufficient time to recast the brief, which has been prepared for submission to the court on Monday, the 27th instant, no change has been made in the form of the argument. In any event, however, the substance of the argument would not be modified, for the nature of anti-trust statutes is clearly analogous to that of anti-consolidation statutes. Both classes of legislation seek to accomplish similar ends and are similar exercises of the police power.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1901.

Original.

STATE OF MINNESOTA,
Complainant,

vs.

NORTHERN SECURITIES COMPANY,
Defendant.

BRIEF ON BEHALF OF DEFENDANT IN OPPOSITION TO APPLICATION FOR LEAVE TO FILE BILL OF COMPLAINT.

The defendant submits that the bill of complaint proposed to be filed on behalf of the State of Minnesota does not present a controversy of a civil and judicial nature between a state and a citizen of another state justiciable in this court, and that no state can call upon this court to enforce its penal or police laws in other states.

It is difficult to gather from the bill of complaint or the printed suggestions exactly what act in violation of any statute of Minnesota is relied on as the foundation of the alleged cause of action; but it may fairly be said that, in its final analysis, the bill of complaint asks this court to restrain by injunction a citizen of New Jersey from doing there acts which are entirely lawful according to her laws and which are sanctioned by her statutory policy, simply because those acts violate or evade or tend to circumvent the public or penal or

police laws of the complainant state. There is no suggestion that the acts complained of are not entirely lawful in the State of New Jersey, or that it is not within the corporate powers of the defendant corporation as an investment company to acquire and hold the stocks of railway companies. The sole ground of complaint is the alleged violation *in New Jersey* of certain enactments contained in the statutes of Minnesota. The injunction prayed for would be nothing more or less than an order compelling the defendant to obey in New Jersey the laws of Minnesota. Stated in different terms, the court is urged to entertain jurisdiction at the suit of the State of Minnesota for the purpose of restraining a private corporation, which is a citizen of another state, domiciled and doing business in the state of its organization and under her laws, from acquiring, holding or exercising any rights of ownership in respect of shares of the capital stock of two railway companies located in Minnesota, whose lines happen to be parallel or competing, on the ground that the acquisition and holding of such stocks may tend to evade or defeat the statutory policy or penal laws of Minnesota.

It should be appreciated that no relief is sought against the Great Northern Railway Company or against the Northern Pacific Railway Company, although both are alleged to be corporations of the State of Minnesota, and although both are clearly within the jurisdiction of the courts of that state. These two corporations confessedly have not sinned against any statutory or constitutional provision of Minnesota, and, so far as this bill of complaint is concerned, no relief can be granted against them, for they are not made

parties. At best, the grievance is that the ownership of the shares of these two corporations, formerly vested in several persons, has now been united in one holder, the defendant corporation. But reference is made to no Minnesota statute, and none exists, which prohibits individuals or copartnerships or private corporations from acquiring and holding stocks of parallel or competing railroad companies. On the contrary, the incorporating statute of the Great Northern Company, as well as the general laws of Minnesota, expressly make the stock personal property, and, of course, it is transferable as such wherever the owner desires to sell or may find his market.[1] If the state had desired to prevent what is alleged to have happened, namely, the acquisition of the stock of one company by the individual holder of the stock of another, the legislature might have attempted to limit this right to acquire property by appropriate legislation, which would present a different question and be then of doubtful constitutionality. The significance of this failure of the legislature to inhibit such joint holding of the stocks of two parallel or competing companies is most marked in view of the statement contained in the opinion of Mr. Justice Brown in *Pearsall* v. *Great Northern Railway*, 161 U. S. 646, 671, and *Louisville & Nashville Rd.* v. *Kentucky*, 161 U. S. 677, 693, as to the power of individual owners to own such stocks. The legislature of Minnesota, however, has not seen fit and may never see fit to pass an act prohibiting an individual or copartnership or private corporation from acquiring, owning and hold-

[1] Session Laws Minn. 1856, p. 294; Gen. Stats. 1866, c. 34, § 39; Gen. Stats. 1878, c. 11, § 3; Gen. Stats. 1894, § 1510.

ing stocks of two parallel or competing railway companies; in a word, it is now a *casus omissus*.

If it be urged that the word "managers" contained in the act of 1874 applies to Mr. James J. Hill, Mr. William P. Clough and others, who were directors or officers of the Great Northern Company, and that they could not individually, while acting as managers, acquire the stock of a parallel or competing company, it may be said that the act of 1881 omits all reference to "managers" and that this subsequent act impliedly repealed the prior act which covered exactly the same subject matter. See appendix; *United States* v. *Caflin*, 97 U. S. 546, 551. At any rate, these gentlemen and numerous others whose names are mentioned in the bill of complaint, are not parties to this suit. Their rights cannot be adjudicated or their acts enjoined in their absence. They were omitted because to make residents of Minnesota parties defendant would have ousted the court of jurisdiction. It will strike the court as a novel proposition that the legal right of the Northern Securities Company to acquire and hold property under the laws of New Jersey is to be tested and determined by the individual character or relations of one or more of her stockholders or directors.

The alleged threatened injury to the proprietary interests of the State of Minnesota, alleged in the bill of complaint, is altogether remote and fanciful. It is apprehended, among other injuries, that the cost of operating and maintaining the public institutions of the state may be greater if freight rates are increased. Another apprehended injury is to her sources of taxation and her revenue therefrom. Everything

in the wide range of matters concerning the public welfare is alleged as threatened. But no direct or actual damage is shown. Of course, these apprehended injuries which may never happen or be attempted, are all too remote, conjectural and contingent. They are mere fears and fancies. Moreover, the state is not at the mercy of railroads; she has full power to prevent unreasonable charges; she is now exercising that power by her Railroad Commissioners, and the present rates cannot be raised without the action of the Commission.[1]

But the most astonishing extreme reached by the bill of complaint is in the allegation that the Northern Securities Company, a private corporation or association organized under the laws of New Jersey (bill, fol. 44), is "a Railroad Corporation within the meaning of the laws of the State of Minnesota" (fol. 86). Yet, it is only upon this forced and preposterous contention that the State of Minnesota can possibly point out any supposed breach of her laws. As, however, the company is clearly not a railroad corporation in any sense, and as it is obviously a simple investment company organized in New Jersey (fols. 45–57), this branch of the complainant's contention need not be further noticed.

I.

Section 2 of Article III of the Constitution extends the judicial power of the federal government "to controversies between a state and citizens of another state."

[1] Laws 1887, c. 10, § 10; Gen. Stat. Minn., ed. 1894, vol. 1, § 388; as amended by Laws 1895, ch. 91, § 1, and Laws 1897, ch. 67, § 1.

The Judiciary Act of September 24, 1789 (c. 20, § 13; 1 Stat. 80), early defined the scope of this clause, and interpreted it to refer only to controversies of a civil nature; in other words, to civil controversies of which judicial tribunals ordinarily took cognizance. "That act, which has continued in force ever since, and is embodied in § 687 of the Revised Statutes, was passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning." Mr. Justice Gray in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297. See also *Chisholm* v. *Georgia*, 2 Dall. 419, 431, 432; *Cohens* v. *Virginia*, 6 Wheat. 264, 398, 399; *The State of Rhode Island* v. *The State of Massachusetts*, 12 Pet. 657, 722, 731; *Hans* v. *Louisiana*, 134 U. S. 1, 12, 14; *Capital Traction Co.* v. *Hof*, 174 U. S. 1, 9.

In the *Wisconsin* case, Mr. Justice Gray reviewed all the cases to that date (1888), and, speaking for the unanimous court, said (p. 293):

> "From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a state and citizens of another state, or of a foreign country, does not extend to a suit by a state to recover penalties for a breach of her own municipal law. This is shown both by the nature of the cases in which relief has been granted or sought and by acts of Congress and opinions of this court more directly bearing upon the question."

It may, therefore, be assumed as settled law that this court will not entertain a suit brought by a state

in this court against a citizen of another state, to enforce a penalty or a penal statute.

The enactments now sought to be given extra-territorial force and obligation declare the local public policy of Minnesota in respect of the consolidation of parallel or competing lines of railway and in respect of monopolies in trade and commerce. Three statutory enactments are set forth in the bill of complaint, as applicable to the subject matter before the court.[1] These statutes are printed at length in the appendix to this brief. It is manifest that they are in their essence penal or police laws.

It is, perhaps, doubtful whether the Minnesota anti-trust act of 1899 applies to the consolidation of railroad corporations or bears upon that question; but as the bill of complaint and the printed suggestions rely upon this statute as one of the essential elements of the cause of action, it will be assumed to apply, but only for the sake of argument. On that assumption, it will be pertinent to call attention to the fact that, in neither the bill of complaint nor in the printed suggestions filed in support of it, is there any mention of section 2 of the anti-trust act, which provides for fine and imprisonment. Obviously, the nature of this legislation could not be intelligently determined without considering the provision imposing the penalty and punishment. Section 2 of the act is, therefore, printed below at length, followed by sections 3 and 6, which will show the true character of the legislation and the nature of the remedy.

[1] Gen. Stats. Minnesota 1894, § 2715, p. 742; Gen. Laws 1874, ch. 29, p. 154; *ib.*, 1881, ch. 94, p. 109; Gen. Laws 1899, ch. 359, ch. 487.

"SEC. 2. Every person who shall either directly or indirectly make any such contract, agreement or arrangement, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

SEC. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this state, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this state, except as to the final disposition of its property under the laws of this state. . . .

SEC. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and it is hereby declared to be the duty of the attorney-general, to institute,

> in the name of the state, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation which may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. *Provided*, that when such proceedings are instituted by any one other than the attorney-general, the state shall not be in any manner liable for the costs or for any of the expense of such proceedings. And *provided, further*, that when the attorney-general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act."

It will thus be seen that section 2 of the act of 1899 provides a pecuniary fine or imprisonment for disregard or breach of the act; that section 3 extends the act to corporations and, in addition to the pecuniary penalty, makes their charters, rights and franchises subject to forfeiture, and that section 6 provides the remedy *in the name of the state*. These provisions clearly demonstrate the penal character of this legislation.

The omission to print section 2 in the bill of complaint and printed suggestions was, of course, either inadvertent or because the state deemed the section immaterial. Yet, section 2 will doubtless be considered by the court as of controlling importance in view of the authoritative decision in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 293, quoted above.

As to individuals, the punishment for a breach of the law is a fine of from $500 to $5,000 or imprisonment. A corporation (section 3) "shall, in addition to the penalty prescribed in section two (2) of this act forfeit its charter, rights and franchises." Section 6 provides that any

citizen may, and it is "declared to be the duty of the attorney general, to institute, *in the name of the state* proceedings in any court of competent jurisdiction . . . for the purpose of imposing the penalties imposed by this act or securing the enforcement of section three (3) hereof." No other penalty or punishment or remedy is provided. The statute is, therefore, brought within the settled rule that where a right is created or an act is prohibited and a specific penalty or punishment or remedy is provided, the enforcement of the law is confined to this penalty or punishment and the remedy is exclusive.

It will indeed be a surprising revelation if this court shall now declare that it has original jurisdiction to enforce the anti-trust laws of the various states against citizens of other states domiciled in such other states (*United States* v. *Lathrop*, 17 Johns. 4, 21, 32; *State ex rel.* v. *Associated Press*, 159 Mo. 410, 466).

Appreciating that no such jurisdiction is likely to be assumed, the State of Minnesota further urges, on page 9 of the printed suggestions, that "it is also claimed this is a violation of the federal anti-trust act." But the act of Congress (26 Stat. 209; c. 647, § 7), although it gives to individuals a right to recover damages at law, establishes no new right in individuals to bring suits in equity. As is well known, the remedy in equity is confined to the Attorney-General of the United States, and no right is conferred upon any state or individual to sue for equitable relief (*Ib.*, § 4). It was clearly the intention of Congress specifically to limit the right in equity to proceedings at the suit of the Attorney-General.

II.

One of the fundamental rules on the subject of international law, which all courts recognize, is that no state or nation can, by its laws, directly affect or bind property out of its own territory, or persons not resident therein. This rule finds its clearest statement in Mr. Justice Story's work on the Conflict of Laws, §§ 7, 8 and 20, whose language has been largely adopted by this court in many cases, namely:

> "SEC. 7. It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. . . . No other nation, or its subjects, are bound to yield the slightest obedience to those laws. Whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which from motives of public policy other nations are disposed to yield to them. . . .
>
> SEC. 8. . . . And, accordingly, it is laid down by all publicists and jurists, as an incontestable rule of public law, that one may with impunity disregard the law pronounced by a magistrate beyond his own territory. . . .
>
> SEC. 20. Another maxim, or proposition, is, that no state or nation can, by its laws, directly affect, or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects, or others. This is the natural consequence of the first proposition; for it would be wholly incompatible with equality and exclusiveness of the sovereignty of all nations, that any one nation should be at liberty to regulate either persons or things not within its own territory. It would be equivalent to a declaration, that the sovereignty over a territory was never exclusive in any nation, but only concurrent with that of all nations; that each could

> legislate for all and none for itself; and that all might establish rules, which none were bound to obey. The absurd results of such a state of things need not be dwelt upon. Accordingly Rodenburg has significantly said, that no sovereign has a right to give the law beyond his own dominions; and if he attempts it, he may be lawfully refused obedience; for wherever the foundation of laws fails, there their force and jurisdiction fail also. *Constat igitur extra territorium legem dicere licere nemini, idque si fecerit quis, impune ei non pareri; quippe ubi cesset statutorum fundamentum, robur, et jurisdictio.*[1] P. Voet speaks to the same effect: *Nullum statutum sive in rem, sive in personam, si de ratione juris civilis sermo instituatur, sese extendit ultra statuentis territorium.*[2] Boullenois (as we have seen) announces the same rule: *De droit étroit, toutes les loix, que fait un souverain, n'ont force et autorité que dans l'étendue de sa domination;*[3] and indeed it is the common language of jurists. Mr. Chief Justice Parker has recognized the doctrine in the fullest manner. 'That the laws' (says he) 'of any state cannot by any inherent authority be entitled to respect extra-territorially, or beyond the jurisdiction of the state, which enacts them, is the necessary result of the independence of distinct sovereignties.'[4]

So, in *Houston* v. *Moore*, 5 Wheat. 1, 69, Mr. Justice Story, delivering the opinion of the court, said:

> "It is a general principle too in the policy, if not the customary law of nations, that no nation is bound to enforce the penal laws of another within its own dominions. The authority naturally

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[1] Rodenburg, de Stat., ch. 3, § 1, p. 7.

[2] Voet, de Stat. § 4, ch. 2, n. 7, p. 124; *Id.* 138, 139, edit. 1661.

[3] 1 Boullenois, des Statut. Princip. Gén. 6, p. 4; *Id.* ch. 3, Observ. 10, p. 152.

[4] *Blanchard* v. *Russel*, 13 Mass. 4. The same doctrine is reasoned out with great ability in the opinion of Mr. Chief Justice Taney, in the case of *Bank of Augusta* v. *Earle*, 13 Peters, 584–591.

> belongs, and is confided, to the tribunals of the nation creating the offences. In a government formed like ours, where there is a division of sovereignty, and, of course, where there is a danger of collision from the near approach of powers to a conflict with each other, it would seem a peculiarly safe and salutary rule, that each government should be left to enforce its own penal laws in its own tribunals" (See also *The Antelope*, 10 Wheat. 66, 123).

In *Dred Scott* v. *Sandford*, 19 How. 393, 460, Mr. Justice Nelson said:

> "Every state or nation possesses an exclusive sovereignty and jurisdiction within her own territory; and her laws affect and bind all property and persons residing within it. It may regulate the manner and circumstances under which property is held, and the condition, capacity, and state, of all persons therein; and, also, the remedy and modes of administering justice. And it is equally true, that no state or nation can affect or bind property out of its territory, or persons not residing within it. No state, therefore, can enact laws to operate beyond its own dominions, and, if it attempts to do so, it may be lawfully refused obedience. Such laws can have no inherent authority extra-territorially. This is the necessary result of the independence of distinct and separate sovereignties."

The cases of *Pennsylvania* v. *The Wheeling &c. Bridge Company*, 9 How. 647; 11 How. 528; 13 How. 518 and 18 How. 421, 429, and *Missouri* v. *Illinois & Chicago District*, 180 U. S. 208, 218, are not at all inconsistent with the fullest application of the principle that the penal or police laws of a state have no force or obligation in another state, and these precedents do not in any way affect the doctrine of *Wisconsin* v. *Pelican Ins. Co.* Neither of these cases involved any attempt to give a

state statute the slightest extra-territorial force or obligation. In the *Wheeling Bridge* case as in the *Chicago Drainage* case, the suit was in equity to restrain a nuisance: in the former, the nuisance was a direct and actual damage to property owned by the state in its individual capacity; in the latter, the nuisance was dangerous to the health of the people of Missouri. Each was a case which involved a controversy of a civil nature, and in each the state showed a special and peculiar injury resulting from the nuisance "such as would enable a private person to maintain a similar action in another court," and thus made manifest that the controversy was one of a civil nature as distinguished from a penal or police prosecution (*South Carolina* v. *Georgia*, 93 U. S. 4, 14; *Pennsylvania* v. *Wheeling &c. Bridge Co.*, 13 How. 518, 559). If a citizen of Pennsylvania, instead of the state, had owned the canal, a suit brought by him to enjoin the construction of the bridge would have been a controversy of a civil nature. A suit brought by a citizen of Missouri to restrain the pollution or diversion of a river in which he had a special or peculiar interest would be a controversy of a civil nature. The injury threatened would be physically present and sustained within the state itself. The injury would be direct and not speculative; it would be actual and not contingent or fanciful or merely possible.

On the other hand, take the case at bar. The plea of damage is most remote and fanciful and conjectural. It is based solely on what may possibly happen if there be an abuse of the power of the defendant as owner

of the stocks of competing railroads, and if the defendant should consolidate the two roads; but, in the eye of the law, such theoretically possible damage cannot be said to have any reasonable certainty or probability. No individual could maintain an action upon any such fears or fanciful theory of damage or contingent injury.

There is, therefore, no analogy between the case of a nuisance threatening an immediate, actual, physical injury to property or health, and the case alleged in the present bill of complaint, which is no more and no less than a simple attempt to enforce extra-territorially the penal or police laws of Minnesota, remotely affecting property.

It is not disputed that acts may be done in New Jersey which, although permissible or even praiseworthy there, may be a violation of the penal laws or constitute a nuisance or libel or other tort or crime in Minnesota, where those acts take effect. A man who erects a nuisance in one state which takes effect in another state, or who causes a libel to be circulated in another state, or who shoots a man across a frontier or state line, or who sends poisonous or contagious articles into another state, is undoubtedly subject to punishment in that state whenever its courts can get jurisdiction over his person; but if those courts cannot get jurisdiction over his person, they cannot try him. Jurisdiction of the offense or subject matter and judicial power to try the offender are very different things. The first exists whenever the offense was committed within the state; the other, when the offender is brought into court, and not before. *Adams* v. *The People*, 1 N. Y.

(Comstock) 173, 179; *State* v. *Hall*, 115 N. C. 814; 28 L. R. A. 289, 291.

The fact that a state may be unable to obtain jurisdiction of the offender is not a test of its jurisdiction over the offence; for such inability may exist where the person who committed the offence was, at the time of its commission, within the territory, but subsequently fled to the jurisdiction of another state or country. Such other state may give him up as a matter of comity; but that is widely different from permitting the foreign state to come into her courts and enforce its own laws or enjoin their violation.

This principle has been maintained by the executive department of the Government with regard to our foreign relations. We decline to recognize or enforce the penal laws of other countries directly or indirectly. Thus, in the "blue book" covering the "Report on Extra-territorial Crime and the Cutting Case" by Mr. Moore to Mr. Bayard, Secretary of State, published in 1887, it was, among other things, said (p. 125):

> "For a nation to hold its penal laws to be binding on all persons within the territory of another state, is to assert a right of sovereignty over the latter, and impair its independence. A state may, if it see fit, tie its criminal law about the neck of its citizen and hold him answerable for its violation everywhere. But even this power of control has its limitations. For the citizen so bound is nevertheless not exempt from obedience to the law of the place where he may be, and it would be no defense to a charge of having violated it to say that the act complained of was required by the penal law of his own country. The local allegiance would be paramount; his double allegiance would be

his misfortune, for relief from which he could appeal to the mercies of his own government alone.

When a man in his own country violates its law, he is answerable for his misconduct to those laws alone, and it is his right to be tried under them and in accordance with the methods of procedure they prescribe. To say that he may be answerable to another law because the person he attacks is a foreigner would in principle subject him in his own country not merely to a dual but to an indefinite responsibility. Such pretension is an assertion not only of an *imperium in imperio*, but of *imperia in imperio*. It would expose citizens and all other persons in the United States to liability to as many penal systems as there happened to be nationalities represented in the foreign population. Every fresh accession to that population would extend the operation and potentially increase the variety of foreign penal systems in force in this country.

The mere statement of such a proposition is a sufficient refutation of it."

The statutory enactments of the State of Minnesota, therefore, have, of themselves, on what must be deemed axiomatic principles, no force or obligation whatever in the State of New Jersey as affecting or binding citizens of New Jersey domiciled and acting there. Consequently, the defendant, as a citizen of New Jersey, may do in that state anything that her laws permit, and no federal court can interfere by injunction to enforce there the penal and police laws of another state.

III.

If we assume that the act of 1899 contains no penalties or punishments, but simply prohibits the

doing of certain acts tending to create a monopoly in trade and commerce, or if we assume that the acts of 1874 and 1881, which contain no penalties, are alone relied on and sought to be enforced by the State of Minnesota, does this prohibitory legislation have any extra-territorial force and obligation? Can it be possible that such legislation is not within the principle of the decision in *Wisconsin* v. *Pelican Ins. Co., supra?* Do such enactments in the nature of things differ at all from any other police statute which imposes penalties? Do they differ in principle from any general police law which forbids acts and imposes penalties for breach or disobedience? Surely, it cannot be maintained that the nature of a police law without penalties is so different from a similar law with penalties, that the former may properly be given extra-territorial force and obligation, and the latter not. A penalty is but the punishment for disobedience; it does not determine the nature of the law. Obviously, the same reasons should operate in both cases; and if a law imposing a punishment or penalty cannot be enforced extra-territorially, a different rule cannot apply to a similar law, because it omits the penalties and merely commands obedience.

The nature of laws prohibiting the consolidation of railroad companies is substantially similar to that of the anti-trust acts. Such laws have always been recognized as enacted under the police power of the state (*Louisville & Nashville R'd* v. *Kentucky*, 161 U. S. 677, 695). Both classes of legislation seek the same end and are exercises of the police power. So also as to the regulation of railroad rates. A suit to enforce such regulations, to enjoin their breach, or to

collect penalties would not be a "suit of a civil nature." Most interesting and exhaustive discussions of the point will be found in the opinion of Mr. Justice Brewer, then Circuit Judge, in the case of *State of Iowa* v. *Chicago, B. & Q. R. Co.*, 37 Fed. Rep. 497, and also in the cases of *Dey* v. *Chicago, M. & St. P. Ry. Co.*, 45 Fed. Rep. 82; *Moloney* v. *American Tobacco Co.*, 72 Fed. Rep. 801, 802, and *State of Indiana* v. *Alleghany Oil Co.*, 85 Fed. Rep. 870. See also *Arkansas* v. *Kansas & Texas Coal Co.*, 183 U. S. 185.

All systems of jurisprudence necessarily divide themselves into the definition and protection of public and private rights, and the punishment and redress of public and private wrongs. Legislation which creates and enforces such rights is said to be either civil or penal. Laws which forbid certain acts for the public good, and which are to be enforced by the state itself—which are enacted to secure public and not private rights—which punish or forbid a wrong to the public as distinguished from a wrong to the individual—which are designed to redress public and not private injuries—are police in their very nature and are generically called "penal," although the term may not be strictly accurate. When courts say that penal laws cannot be enforced beyond the jurisdiction of the state which enacts them, it is not intended to assert that a penalty imposed by statute for a private wrong, or as a redress or indemnity for a violated private right, could not be so enforced. What is meant is that those penal provisions which are in their essence police regulations and intended to enforce obedience to public laws and to redress public wrongs cannot be given extra-territorial

force and obligation. It is because they are, in their essential nature, public or police laws, as distinguished from private or civil laws, that the courts of a foreign state decline to enforce them. They will not compel their own citizens to obey such laws of other states.

The fundamental test of the true nature of a law must always be whether, in its essence and without regard to form, it is designed to prevent or redress public wrongs and mischiefs, or is designed to protect and redress violated private rights. In the former case, it is penal or police; in the latter, private or civil. If, as here, a foreign state "claims the right to maintain [an] action . . . by virtue of its sovereign powers for and in behalf of the citizens of the state" (suggestions, p. 6) to enforce its penal and police laws, the controversy is not of a civil nature or one of which courts of other sovereignties take cognizance (Hardcastle on Statutory Law, 3rd ed., 1901, pp. 450, 451; *Huntington* v. *Attrill*, [1893] App. Cas. 150; *Same* v. *Same*, 146 U. S. 657; Dicey, Conflict of Laws, pp. 220, 221). If, however, an action is upon a statute which is designed to prevent or redress an injury to property or persons, and one which in its essence is civil, and determinable by those rules which guide courts in adjudicating between individuals, then, if the injury be actual and direct, and not speculative or remote, the right may be redressed or the injury prevented in a suit of a civil nature in the courts of other states.

IV.

The State of Minnesota, however, contends that jurisdiction of the suit should be entertained, be-

cause relief is sought in equity to protect her alleged proprietary interest in the enforcement of her prohibitory laws, although no jurisdiction in equity is created or conferred by any statute and although no direct or actual damage to property or persons is alleged; in other words, the contention would seem to be that the true character of the subject matter of the controversy is transformed from the enforcement of a penal or police statute to a "controversy of a civil nature" within the meaning of the Judiciary Act of 1789, or Sec. 687 of the Revised Statutes, simply because the relief sought is an injunction restraining the threatened breach of those laws. Of course, the real nature of legislation cannot be affected or determined by the mere form of procedure, any more than the absence of a penalty or other punishment can change the real nature of a police law.

As was well said by Showalter, C. J., in *Moloney* v. *American Tobacco Co.*, 72 Fed. Rep. 801, 802, which was an information in equity brought by the Attorney-General of Illinois to restrain the violation of the state statute forbidding trust combinations—

> "A question here is whether or not the present proceeding is a suit of a civil nature. This court does not adjudicate upon penal or criminal statutes of a state. The purpose of this information is to enforce against the American Tobacco Company the prohibition from doing business in Illinois, and the cause of action alleged is conduct which, within the meaning of the act, if it have any meaning, is an offense or misdemeanor. The information does not show, as the ground of action, any contract right in the state, or any property right or easement vested in the state, as trustee, repre-

> senting the public or otherwise. The action is based on a statute or rule of conduct which the state, as a governing agent, has prescribed, and the violation of which, on the theory of the information, is an offense or misdemeanor. This is not, in its nature, a suit to recover for, or stop the continuance of, an injury. It is the prosecution of an offender against a criminal statute. This defendant corporation is not bound to refrain from carrying on a monopoly in cigarettes because the state, as a sovereign, or in any other capacity, is damaged thereby, but because the state, as a sovereign, has made a rule to the contrary. The damage, whatever it may be, would be precisely the same if no such rule or statute had been enacted. Yet, in the latter case, there would be no action. The information, therefore, as already said, has no other purpose than the enforcement of a penal statute. The supreme court of the United States in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 8 Sup. Ct. 1370, ruled that an action of debt by a state to recover on a judgment for a fine was not a suit of a civil nature. So, here, the circumstance that an injunction is the instrument, and apparently the only instrument, of the state's displeasure, does not change the essential nature of the conduct complained of, or the legal sanction to which said conduct must be referred."

It will at once occur to the court that every police regulation of a state may incidentally affect her property or hospitals or schools or prisons or insane asylums or other institutions (complaint, fol. 7). Indeed, if people could be restrained by injunction from committing crimes, the state would save much expense. Every anti-trust law presumably affects necessaries which a state must

buy for her schools, hospitals, prisons, asylums, institutions, &c. Every anti-consolidation statute may affect railroad rates or taxes. Is it the theory of our system of government that such *incidental and theoretical* proprietary interests vest jurisdiction in this court to give extra-territorial force and obligation to the police laws of any state at the suit of that state against the citizens of another state! Does this theoretical and remote proprietary interest of one state make it the duty and obligation of citizens of other states to obey such laws? It may be vitally to the interest of one state to protect what another would condemn, to foster what another would prohibit, to encourage what another would destroy. Does jurisdiction exist to restrain the citizens of one state from doing any act which may possibly affect injuriously the property interests or the revenue of another state?

Let us suppose that a number of citizens of New York are engaged in that state in a scheme, which, if successful, would conceal from taxation property in Minnesota liable thereto, or hinder the collection of taxes thereon, or otherwise circumvent her tax laws. Could the State of Minnesota, in this court or elsewhere than in her own courts, maintain a suit to restrain such acts?

The State of Minnesota has a stringent pure food law, forbidding the sale within the state of imitations of articles of food, such as oleomargarine. One or more persons, citizens of another state, are engaged in the state of their residence in manufacturing oleomargarine in imitation of butter intended to be shipped into Minnesota, and there sold to consumers. Would a bill to

enforce this food statute, by enjoining the carrying out of such intention, be entertained in this court?

The State of Minnesota, like most of the other states, has a stringent insurance law, forbidding unlicensed companies from insuring property in the state. One or more companies of other states are, without license, issuing policies covering property within the state. Can Minnesota sue in this court to enjoin such violation of her statutes?

V.

If the public or police laws of one state are ever recognized and enforced in the courts of a sister state, it is only from considerations of utility and the mutual convenience of states, *ex comitate, ob reciprocam enim utilitatem*, and whatever force and obligation they are permitted to have in such sister state depend solely upon the comity exercised by the latter. Story, Conflict of Laws, secs. 18–23; *Hoyt* v. *Sprague*, 103 U. S. 613, 630; *Lamar* v. *Micou*, 112 U. S. 452, 472. New Jersey has never recognized or extended her comity to any laws of other states of such a character as are alleged in the bill of complaint, and no state, so far as we know, has ever enforced the public penal or police laws of another state. Proceedings or prosecutions to enforce police or penal laws were, at the time the Constitution was adopted, and ever since have been, considered to be such as would not be entertained by the judiciary of the foreign state at all. Thus, in *Wisconsin* v. *Pelican Ins. Co.*, *supra*, Mr. Justice Gray said at pp. 287, 289:

> "Notwithstanding the comprehensive words of the Constitution, the mere fact that a state is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another state or her citizens. . . .
>
> The object of vesting in the courts of the United States jurisdiction of suits by one state against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff state were compelled to resort to the courts of the state of which the defendants were citizens. Federalist, No. 80; Chief Justice Jay in *Chisholm* v. *Georgia*, 2 Dall. 419, 475; Story on the Constitution, §§ 1638, 1682. The grant is of 'judicial power' and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all."

The inquiry is thus presented whether this court can adjudicate what force and obligation shall be extended by the State of New Jersey and her courts to the legislation of Minnesota. Presumably, New Jersey would decline to enforce against her citizens the obligation to obey the police laws of Minnesota, which may differ radically from the laws of New Jersey. Is it possible seriously to contend that it was the intention of the Convention in framing, or of the people in adopting, the Federal Constitution, to confer upon the federal courts the power to determine for any state and against her will what comity she should extend to other states? Even if the courts of New Jersey had de-

clared her willingness to recognize and enforce the laws of Minnesota, it by no means would follow that this court could act and grant relief under that comity. As Mr. Justice Field said in *Mahon* v. *Justice*, 127 U. S. 700, 706, decided at the same term and on the same day as *Wisconsin* v. *Pelican Ins. Co.*, *supra*:

> "If there were any such comity, its enforcement would not be a matter within the jurisdiction of the courts of the United States. By comity nothing more is meant than that courtesy on the part of one state, by which within her territory the laws of another state are recognized and enforced, or another state is assisted in the execution of her laws. From its nature the courts of the United States cannot compel its exercise when it is refused; it is admissible only upon the consent of the state, and when consistent with her own interests and policy."

The case of *Commonwealth of Kentucky* v. *Dennison, Governor, &c.*, 24 How. 66, 107, shows how distinctly this court has recognized that it cannot enforce those governmental regulations and police laws which are essentially within the comity of states, to be conceded or withheld at their will. In that case, jurisdiction of the parties was clearly conferred by the Constitution, for it was practically a suit between two states; but notwithstanding the fact that Kentucky sought to have this court enforce against Ohio a duty imposed by the Federal Constitution itself (art. IV.), this court declined to entertain jurisdiction or to grant the relief on the ground that it was not within the judicial power to enforce what must rest on comity. Mr. Chief Justice Taney, delivering the unanimous opinion of the court, said (p. 107):

"The demand being thus made, the act of Congress declares, that 'it shall be the duty of the executive authority of the state' to cause the fugitive to be arrested and secured, and delivered to the agent of the demanding state. The words, 'it shall be the duty,' in ordinary legislation, imply the assertion of the power to command and to coerce obedience. But looking to the subject-matter of this law, and the relations which the United States and the several states bear to each other, the court is of opinion, the words 'it shall be the duty' were not used as mandatory and compulsory, but as declaratory of the moral duty which this compact created, when Congress had provided the mode of carrying it into execution. The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the executive of the state; nor is there any clause or provision in the Constitution which arms the government of the United States with this power. Indeed, such a power would place every state under the control and dominion of the general government, even in the administration of its internal concerns and reserved rights. And we think it clear, that the federal government, under the Constitution, has no power to impose on a state officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the state, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the state. . . .

It is true that, in the early days of the government, Congress relied with confidence upon the co-operation and support of the states, when exercising the legitimate powers of the general government, and were accustomed to receive it, upon principles of comity, and from a sense of mutual and common interest, where no such duty was imposed by the Constitution. And

laws were passed authorizing state courts to entertain jurisdiction in proceedings by the United States to recover penalties and forfeitures incurred by breaches of their revenue laws, and giving to the state courts the same authority with the district court of the United States to enforce such penalties and forfeitures, and also the power to hear the allegations of parties, and to take proofs, if an application for a remission of the penalty or forfeiture should be made, according to the provisions of the acts of Congress. And these powers were for some years exercised by state tribunals readily, and without objection, until in some of the states it was declined because it interfered with and retarded the performance of duties which properly belonged to them as state courts; and in other states doubts appear to have arisen as to the power of the courts, acting under the authority of the state, to inflict these penalties and forfeitures for offences against the general government, unless especially authorized to do so by the state.

And in these cases the co-operation of the states was a matter of comity, which the several sovereignties extended to one another for their mutual benefit. It was not regarded by either party as an obligation imposed by the Constitution. And the acts of Congress conferring the jurisdiction merely give the power to the state tribunals, but do not purport to regard it as a duty, and they leave it to the states to exercise it or not, as might best comport with their own sense of justice, and their own interest and convenience."

There are, it is true, many cases in which extra-territorial force has been allowed to rights based upon the statute law of other states; but a review of these cases will show that in each rights of a purely private nature were concerned, none the less private and individual

because conferred by statute. Courts, for example, have enforced the so-called statutory liability of stockholders or officers of foreign corporations, although such liability is frequently termed a penalty. But relief has been extended not upon the theory that the statutes in question conferred ubiquitous rights, but upon the distinct ground that the rights were in fact contractual and personal, and the penalty or redress was for violated private rights. Thus in *Flash* v. *Conn*, 109 U. S. 371, 377, the court said: "We think the liability imposed by section 10 [of the stockholders' liability act of New York] is a liability rising upon *contract*." And in *Whitman* v. *Oxford National Bank*, 176 U. S. 559, 563, speaking of a similar statute of Kansas, the court said:

> "The liability which by the constitution and statutes is thus declared to rest upon the stockholder, though statutory in its origin, is contractual in its nature."

And for this express reason—because the obligation in its last analysis was, in fact, contractual—this liability has been enforced in other states.

So, likewise, of statutes conferring a right of action for wrongful death. Such statutes are given in other states an apparent force and obligation. The right of action, however, is not based on comity, but after all upon a personal trespass or tort, in its essence a civil injury the world over, and upon the theory that the cause of action has accrued within the jurisdiction of the state which enacted the remedy, and that such statutes are not penal. Such enactments are purely remedial. In *Stewart* v. *Baltimore & Ohio Railroad*

Co., 168 U. S. 445, 448, Mr. Justice Brewer, delivering the judgment of the court, said:

> " A negligent act causing death is in itself a tort, and were it not for the rule founded on the maxim '*Actio personalis moritur cum persona*' damages therefor could have been recovered in an action at common law. The case differs in this important feature from those in which a penalty is imposed for an act in itself not wrongful, in which a purely statutory delict is created. The purpose of the several statutes passed in the states, in more or less conformity to what is known as ' Lord Campbell's Act,' is to provide the means for recovering the damages caused by that which is essentially and in its nature a tort. Such statutes are not penal, but remedial, for the benefit of the persons injured by the death. An action to recover damages for a tort is not local, but transitory, and can, as a general rule, be maintained wherever the wrongdoer can be found."

In *Huntington* v. *Attrill*, 146 U. S. 657, the New York statute making officers of a corporation liable in certain cases for the debts of the company was held to be an act that might be given effect in another state, although even there the power of this court to render it effective against the will of a sister state only came into existence when the statutory remedy had been first reduced in New York into a judgment, and thus brought under the full faith and credit clause of the Constitution. The argument of the opinion was directed to the point of showing that the New York statute was not penal in its essence and was enforceable extra-territorially because of the redress which it afforded for an injured *private* right. Mr. Justice Gray, delivering the opinion of the court, said at page 667 *et seq.*:

"Penal laws, strictly and properly, are those imposing punishment for an offence committed against the state, and which, by the English and American constitutions, the executive of the state has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal. . . . The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the familiar classification of Blackstone: 'Wrongs are divisible into two sorts or species: *private wrongs* and *public wrongs*. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed *civil injuries:* the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of *crimes* and *misdemeanors*.' 3 Bl. Com. 2.

Laws have no force of themselves beyond the jurisdiction of the state which enacts them, and can have extra-territorial effect only by the comity of other states. The general rules of international comity upon this subject were well summed up, before the American Revolution, by Chief Justice De Grey, as reported by Sir William Blackstone: 'Crimes are in their nature local, and the jurisdiction of crimes is local. And so as to the rights of real property, the subject being fixed and immovable. But personal injuries are of a transitory nature, and *sequuntur forum rei*.' *Rafael* v. *Verelst*, 2 W. Bl. 1055, 1058.

Crimes and offences against the laws of any state can only be defined, prosecuted and pardoned by the sovereign authority of that state;

and the authorities, legislative, executive or judicial, of other states take no action with regard to them, except by way of extradition to surrender offenders to the state whose laws they have violated, and whose peace they have broken. . . .

Beyond doubt, (except in cases removed from a state court in obedience to an express act of Congress in order to protect rights under the Constitution and laws of the United States), a Circuit Court of the United States cannot entertain jurisdiction of a suit in behalf of the state, or of the people thereof, to recover a penalty imposed by way of punishment for a violation of a statute of the state, 'the courts of the United States,' as observed by Mr. Justice Catron, delivering a judgment of this Court 'having no power to execute the penal laws of the individual states.' *Gwin* v. *Breedlove*, 2 How. 29, 36, 37; *Gwin* v. *Barton*, 6 How. 7; *Iowa* v. *Chicago, &c., Railway*, 37 Fed. Rep. 497; *Ferguson* v. *Ross*, 38 Fed. Rep. 161; *Texas* v. *Day Land & Cattle Co.*, 41 Fed. Rep. 228; *Dey* v. *Chicago, &c., Railway*, 45 Fed. Rep. 82, pp. 672, 673. . .

The question whether a statute of one state, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offence against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act. There could be no better illustration of this than the decision of this court in *Dennick* v. *Railroad Co.* 103 U. S. 11."

CONCLUSION.

For over a century of the continuance of an "indestructible union of indestructible states," it has never been found necessary to hold that the penal or police laws of one state should have force and obliga-

tion beyond her territorial jurisdiction. The theory has been that it is wiser and safer to limit such laws and coercive enactments to the confines of the state adopting them. This federal policy heretofore has been generally found adequate to all purposes of promoting order and tranquillity. To overturn it now would open the door to great public mischiefs and create occasion for constant clashing and irritation.

Often, during the first seventy-five years of the national government, states and combinations of states were inflamed, as upon the slavery question, because one state was permitting what was intended to injure institutions of other states and what was considered property therein. Clamor and excited public feeling burned to the white heat. Temporary exigencies and the desirability of peace at any price seemed to dictate the necessity for restraining and preventing acts in one state destructive of the institutions or property of other states. Yet, no one conceived it possible that this court was open for any such redress by injunction as is sought in the present instance.

We have in the past kept straight to the line of state autonomy and sovereignty in this regard. We have recognized that the public policy of one state or section may be dictated by considerations of local welfare or prejudice or interest and may differ radically from the public policy or welfare or prejudices of other states. We have ever looked upon it as one of the main objects of the Constitution to preserve the local self-government of the states. Our peace and progress depend on the continuance of independent local governments, which may freely shape their own

laws and destinies as they think best. Momentous, indeed portentous, would be the declaration by this court that any state may reach beyond her borders and enjoin acts contrary to her public laws, upon the empty and illusory pretext that her revenue may be affected, or the cost of the supplies which she purchases or uses for her universities, hospitals, prisons, insane asylums, &c., increased, by a holding in one ownership of the shares of stock of two parallel or competing railroad companies. This court is not going to embark on any such stormy sea of obscure fear and speculative apprehensions. If it may do so consistently with the intention of the framers of the Constitution, no one can conceive what interference it may not undertake in the local and police affairs of each state.

It is, therefore, submitted that jurisdiction of such a proceeding as the bill of complaint sets forth should not be entertained, because no controversy constitutionally cognizable by this tribunal is presented for adjudication.

Washington, January 27, 1902.

JOHN G. JOHNSON,
JOHN W. GRIGGS,
WILLIAM D. GUTHRIE,
Of counsel for defendant.

APPENDIX.

Act of 1874.

(General Laws Minnesota, 1874; Ch. 29, p. 154.)

An Act relating to railroad corporations and common carriers.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. No railroad corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 9, 1874.

Act of 1881.

(General Laws Minnesota, 1881, Ch. 94, p. 109.)

An act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control, any other railroad corporation, or to consolidate therewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase, or in any way become owner of or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches.

SEC. 2. Any railroad corporation, whether organized under a general law or by virtue of a special charter of the state or territory of Minnesota, or under the laws of any other State or States or Territory, whose lines of railroad now or hereafter constructed within or without this State can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interruption, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected.

Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual meeting thereof, or at a special meeting called for that purpose, by notice of at least thirty (30) days, stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the post office, and published for at least three (3) successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of a majority of such stockholders annexed to such articles; a copy of such articles of consolidation and of the record of such approval or of such consent, accompanied by lists of the stockholders of said corporation, and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations, shall be filed for record in the office of the Secretary of State of this State, and of the State or States or Territory by or under whose laws the said corporations parties to such articles of consolidation were created or exist, before any such consolidation shall have any validity or effect. Upon the filing for record of said copies the said corporations shall become merged in the new corporation provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall, within this State, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations and duties, liabilities to or exemption from taxation, commutations, property, real,

personal and mixed, and things in action, as fully in all respects as the same were possessed by such old corporation or corporations at the time of such consolidation under the laws of this State; and such new corporation shall hold and enjoy the same, and all and every part thereof, without impairment or change as fully in the same manner and to the same extent as if the said consolidation had not taken place. Provided, that all rights of creditors, and all the liens upon the property of either of said old corporations shall be preserved unimpaired, and all the debts, liabilities and duties of either of said consolidating corporations shall thenceforth attach to said new corporation, and be enforceable to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it. Provided further, that all such corporations shall be subject to the laws of this State and the jurisdiction of the courts of this State in the same manner and to the same extent as domestic corporations.

SEC. 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line.

SEC 4. This act shall take effect and be in force from and after its passage.

Approved March 3, 1881.

ACT OF 1899.

(Gen. Laws Minnesota, 1899, Ch. 359, p. 487.)

An Act to prevent the organization of trusts and to provide in certain cases for the forfeiture of the charter of corporations organized under the laws of this state, and to prevent corporations, trusts or combinations under certain circumstances from doing business or enforcing contracts in respect thereto, under the laws of this state.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or

otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this state, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this state, or of the several states, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

SEC. 2. Every person who shall either directly or indirectly make any such contract, agreement or arrange-

ment, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

SEC. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this state, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this state, except as to the final disposition of its property under the laws of this state.

SEC. 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this state in favor of such persons, partnership, association or corporation.

SEC. 5. Any person who shall enter into any correspondence, negotiations or agreement in this state, or who shall, being a resident of this state, go into another state, territory or country, for the purpose of entering into any negotiations or agreement which tend to the formation of any con-

tract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

SEC. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and it is hereby declared to be the duty of the attorney-general, to institute, in the name of the state, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. *Provided*, that when such proceedings are instituted by any one other than the attorney-general, the state shall not be in any manner liable for the costs or for any of the expense of such proceedings. And *provided, further*, that when the attorney-general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

SEC. 7. The word person as used in this act shall be construed to include any corporation or association formed or existing under any law of this state or any other state or country.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899.

Supreme Court of the United States.

No. —. Original.—October Term, 1901.

The State of Minnesota, Complainant,
vs.
The Northern Securities Company, Defendant.

[February 24, 1902.]

On the 7th day of January, 1902, came the State of Minnesota, by Wallace B. Douglas, its Attorney General, and moved the court for leave to file a bill of complaint against the Northern Securities Company, a corporation of the State of New Jersey. Thereupon the court directed that notice of such application should be given to the defendant, and set the motion for argument on January 27, 1902, when it was duly heard.

The bill proposed to be filed was in the following terms:

To the Judges of the Supreme Court of the United States of America:

Your oratrix, the State of Minnesota, complainant, by Wallace B. Douglas, Attorney General thereof, brings this its bill of complaint against the Northern Securities Company, a corporation organized under and by virtue of the laws of the State of New Jersey, and alleges:

I.

That by an act of Congress, entitled "An act for the admission of Minnesota into the Union," approved May 11, A. D. 1858, the said State of Minnesota was admitted into the Union upon an equal footing with the original States.

II.

That said Northern Securities Company is a corporation organized as hereinafter alleged, under and by virtue of the laws of the State of New Jersey, and is a citizen of the State of New Jersey.

III.

A.

That by an act of the Congress of the United States, of March 12 1860, extending to the State of Minnesota the swamp lands grant theretofore made to the State of Arkansas, and by various subsequent acts, the Congress of the United States donated to the State of Minnesota from the public domain large quantities of lands situated within the State of Minnesota, and of the value of several millions of dollars. That the State of Minnesota now has left and undisposed of more than three million acres of said lands, of the value of more than fifteen million dollars, much of which said land is located in the territory traversed by the railroads of the Great Northern and Northern Pacific Railway Companies, as hereinafter alleged. That the value of said land, and the salability

thereof, depends in very large measure upon having free, uninterrupted and open competition in passenger and freight rates over the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies.

That many of said lands are vacant and unsettled and located in regions not at present reached by railway lines, and depend for settlement upon the construction of lines in the future; that it has heretofore been the practice of said Great Northern and Northern Pacific Railway Companies, respectively, to extend spur lines into territory adjacent to each of said roads, as well as into new territory, for the purpose of developing such territory, as well as to obtain traffic therefrom; that such new lines have been built in the past very largely by reason of the rivalry heretofore existing between said companies, for existing, as well as new business; that under the consolidation and unity of control hereinafter set forth, such rivalry will cease, and many of the lands now owned by the State of Minnesota will not be reached by railroads for years to come, if at all, owing to such combination and consolidation removing all rivalry and competition between said companies; that the settlement and occupation of said lands will add very much to their value, and such occupation will depend entirely upon the accessibility of railway lines and transportation facilities for marketing the products raised thereon; that if said lands are sold and become occupied, they will add very largely to the taxable value of the property of the State, and that said lands cannot be sold or the income of the State increased thereby without the construction of railroad lines to, or adjacent to, the same.

B.

That the State of Minnesota is now and for many years past has been the owner of, and continuously maintained, an educational institution for the benefit of its citizens, known as the University of Minnesota; also a large number of hospitals for the insane, within its territorial limits; also five normal schools for the education of teachers within the State; also a State training school for boys and girls; also several State schools for the education, care and maintenance of the deaf, dumb, blind and feeble-minded; also a State school for indigent and homeless children; also a State penitentiary and reformatory.

That for many years past the State of Minnesota has continuously maintained and supported each of said institutions, and in the care, maintenance and management thereof has been compelled to and in the future, of necessity, will annually purchase large quantities of supplies for said institutions, including provisions, clothing and fuel, a great portion of which the State of Minnesota is compelled to ship over the different lines of railway owned and operated by the Northern Pacific Railway Company and the Great Northern Railway Company.

That the State of Minnesota is compelled to expend annually more than seven hundred thousand dollars in the operation and maintenance of said public institutions, most of which sum is raised by general taxation upon the lands and other property of the citizens of the State of Minnesota, and situated therein. That the amount of taxes which said State of Minnesota can collect, and the successful maintenance of its said public institutions, as well as the performance of its governmental functions and affairs, depends largely upon the value of the real and personal property

situated within its territorial limits, and the general prosperity and business success of its citizens. That the value of said real and personal property of the citizens of the State of Minnesota, as well as their business success and general prosperity, depend very largely upon maintaining in said State free, open and unrestricted competition between the railway lines of said Great Northern and Northern Pacific Railway Companies respectively within said State.

C.

That it has been the settled policy and practice of the State of Minnesota since its organization as a territory to develop the resources of the State by encouraging railroad building therein, and in furtherance of this policy the Territory of Minnesota, by an act thereof, under the date of May 22, 1857, granted to the Minnesota and Pacific Railroad Company a charter, and in consideration of the construction and maintenance of a line of railway in Minnesota, by said company, said territory donated to it out of its public domain about seven hundred thousand acres of land. That said Minnesota and Pacific Railroad Company thereafter became insolvent, and all its property was placed in the hands of a receiver; that such proceeding were thereafter had that all the property of the last named company, including said land, was duly sold and conveyed to the St. Paul, Minneapolis and Manitoba Railway Company, hereinafter mentioned.

That the State of Minnesota, by an act of its legislature, and in consideration of the construction and maintenance of a line of railway by the Great Northern Railway Company, hereinafter referred to, between St. Cloud and Hinckley, a distance of eighty-four miles, donated and conveyed to said last named company upwards of four hundred thousand acres of land then owned by and situated in the State of Minnesota, which said land was then worth more than one million dollars. That in carrying out said policy, and in aid of the building of railways within the State of Minnesota, there has been granted out of the public domain within the limits of the State of Minnesota upwards of 10,500,000 acres of land, nearly all of which has been granted to said Great Northern and Northern Pacific Railway Companies, and the subsidiary companies owned and controlled by them.

D.

That by an act of the legislature of the State of Minnesota, approved March 3, 1881, entitled "An act granting swamp lands to aid in the construction of the main line of the road of the Little Falls and Dakota Railway Company," and which now is a part of the Northern Pacific Railway Company system, hereinafter referred to, the State of Minnesota donated to said Little Falls and Dakota Railway Company two hundred forty-three thousand five hundred and ninety-one (243,591) acres of land situated in and then belonging to said State, in consideration of the construction and maintenance by said last named railway company of a line of railway extending from Little Falls to Morris, in the State of Minnesota.

IV.

Your oratrix further alleges that immense quantities of wheat and other products are shipped annually from East Grand Forks, Crookston, Moorhead, Fergus Falls and other competitive points within the State of

Minnesota, and all on the lines of railway of the said Great Northern and Northern Pacific Railway Companies, hereinafter referred to, to the cities of Duluth, St. Paul and Minneapolis, within the State of Minnesota. That nearly all of the shipment of such products made from the above named initial points are consigned to various citizens at either the city of Duluth, St. Paul or Minneapolis over one or the other of said lines of railroad last above named. That enormous quantities of merchandise have been and will continue to be shipped annually over said lines of railway, between the cities of St. Paul and Minneapolis and various other cities and villages along said lines of railway situated within the State of Minnesota, and which are purchased and used entirely by the people of said State. That the competition in both freight and passenger traffic to and from said places has always been sharp and active between said railway companies, and has secured to the residents of said cities, as well as the State of Minnesota, and to the State of Minnesota itself, much lower rates for both freight and passengers than would otherwise have been obtained, or than will or can be obtained in case the consolidation or unity of control and management of said Great Northern and Northern Pacific Railway Companies, hereinafter alleged, is not enjoined as herein prayed.

V.

That the Great Northern Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, to wit, under an act duly passed by the Territory of Minnesota, entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company," approved March first, A. D. 1856, and various subsequent acts of the State of Minnesota amendatory thereof and supplemental thereto, respectively entitled as follows:

"An act to amend an act entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company,' passed March 1, 1856." Approved February 23, 1864.

"An act of the legislature of the State of Minnesota entitled 'An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter, or any other railroad in southern Minnesota.'" Approved February 11, 1865.

"An act to amend an act entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company,' approved March 1, 1856, and to repeal certain portions of an act amending the charter of said company, passed February 23, 1864." Approved February 28, 1865.

"An act to amend an act entitled 'An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and Winona and St. Peter Railroad, or any other railroad in Southern Minnesota.'" Approved March 5, 1869.

"An act to amend the charter of the Minneapolis and St. Cloud Railroad Company." Approved March 6, 1869.

"An act to amend the charter of the Minneapolis and St. Cloud Railroad Company." Approved March 2, 1870.

"An act to extend the time for the construction and completion of the branch of the Minneapolis and St. Cloud Railroad Company." Approved March 11, 1879.

"An act to amend an act entitled 'An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota,' approved February 11, in the year of our Lord one thousand eight hundred and sixty-five, as amended." Approved March 1, 1885.

That on the 16th day of September, 1889, the corporate name of said company was duly changed to the Great Northern Railway Company. That during the year 1889 said railway company caused to be constructed a line of railway extending from St. Cloud, Minnesota, to Hinckley, Minnesota, which line was immediately conveyed to the St. Paul, Minneapolis and Manitoba Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, hereinafter referred to as the Manitoba Company. That said Manitoba Company, prior to the first day of February, 1890, had built, purchased and put in operation various lines of railway within the State of Minnesota, as well as in the States of North Dakota, Montana, Idaho and Washington, connecting by rail the cities of St. Paul and Minneapolis, within the State of Minnesota, and various other cities and villages within said State, with each other, and with Puget Sound, on the Pacific Ocean; which said railways are hereinafter more particularly described.

That on the first day of February, 1890, said Manitoba Railway Company leased to the said Great Northern Railway Company, for a period of nine hundred and ninety-nine years, all of the lines of railway, including the rolling stock then owned and controlled by said Manitoba Company; that ever since said last named date said Great Northern Railway Company has continued to and now does control, operate and maintain each and all of said lines as one complete railroad system. That said lines of railway so constructed by said Manitoba Company and now so controlled, operated and maintained by said Great Northern Railway Company under said lease, are described as follows:

A line of railway extending from St. Paul, Minnesota, via Minneapolis, Elk River, St. Cloud, Sauk Center, Fergus Falls, Glyndon, Crookston to the northern boundary line of the State of Minnesota at St. Vincent.

Another line of railway extending from Minneapolis, Minnesota, along the western bank of the Mississippi River to St. Cloud, Minnesota.

Another line of railway extending from St. Cloud easterly to Hinckley, Minnesota.

Another line of railway extending from Elk River, Minnesota, northward to Malaco, Minnesota, on the line of the St. Cloud and Hinckley Branch, last above referred to.

Another line of railway extending from Minneapolis, Minnesota, to Breckenridge Minnesota.

Another line extending from Sauk Center, Minnesota, to Park Rapids, Minnesota.

Another line of railway extending from Hutchinson Junction to Hutchinson, Minnesota.

Another line of railway extending from Benson, Minnesota, thence in a westerly direction to the western boundary line of the State; thence to Watertown, South Dakota.

Another line of railway extending from Evansville, Minnesota, westerly to the State boundary line, thence to Ellendale, North Dakota.

Another line of railway extending from Moorhead, Minnesota, westerly to the State boundary line; thence to Wahpeton, North Dakota.

Another line of railway extending from Moorhead, Minnesota, to Crookston, Minnesota.

Another line of railway extending from Barnesville, Minnesota, to Moorhead, Minnesota.

Another line of railway extending from Carman, Minnesota, to Foster, Minnesota.

Another line of railway extending from Crookston, Minnesota, to Red Lake Falls and Thief River Falls, Minnesota.

All of the foregoing lines being situated in the State of Minnesota, except as hereinafter otherwise expressly stated.

That said Great Northern Railway Company now either owns or controls, and operates and maintains, by virtue of said lease, a line or system of railways connecting with said lines above referred to, and extending from the western boundary line of the State of Minnesota through the States of North Dakota, Montana, Idaho and Washington, to Puget Sound on the Pacific Coast. The said railway lines covered by said lease, or owned by said Great Northern Railway Company, aggregate a total of about four thousand five hundred miles.

That many of said railroads above described being located within the State of Minnesota, were built by subsidary companies or corparations, and said Great Northern Railway Company now owns all of the capital stock of such corporations in addition and as supplemental to said lease; and in addition thereto said Great Northern Railway Company owns all of the capital stock of the Eastern Railway Company of Minnesota, a corporation organized under the laws of the State of Minnesota, and which owns and operates a railway line extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; and from Duluth, Minnesota, to Bemidji, Minnesota; and by virtue of such ownership of stock said Great Northern Railway Company dictates the policy of said railway company and controls the lines of railway and properties of said Eastern Railway Company, and operates the same as a part of the Great Northern system of railway.

That said Great Northern Railway Company also owns all of the capital stock of the Willmar and Sioux Falls Railroad Company, a corporation owning a railroad extending from Willmar, Minnesota, to Yankton, South Dakota, and by virtue of such ownership of stock dictates the policy of and owns and controls the railway line and property of said Wilmar and Sioux Falls Railroad Company.

That all of the railways and railway lines hereinbefore described are operated and controlled by and form a complete system under the name of said Great Northern Railway Company.

That the charter of said Great Northern Railway Company provides as follows: "That all of the affairs and business of said company shall be conducted by or under the direction of a board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things necessary to be done and not inconsistent with the Constitution and laws of the United States, or the laws of this Territory, or this act."

Your oratrix further alleges that the board of directors of said Great Northern Railway Company, at the time of the organization of the

Northern Securities Company, hereinafter referred to, to wit, on or about the 13th day of November, 1901, was and now is composed of the following named persons, to wit: James J. Hill, James N. Hill, Samuel Hill, William P. Clough, Edward Sawyer, M. D. Grover, Jacob H. Schiff and Henry W. Cannon; and at said date the managing or executive officers of said corporation were and now are as follows: President, James J. Hill; Vice President, William P. Clough; Secretary and Assistant Treasurer, E. T. Nichols. That on said last named date said Great Northern Railway Company had issued, and there was then outstanding, a total of one hundred and twenty-five million dollars, par value, of the capital stock of said corporation, and your oratrix is informed and believes, and upon information and belief alleges, that said James J. Hill was on said last named date the owner of or in possession and control of, or had subject to his direction and disposition, more than a majority of said capital stock so outstanding.

VI.

That the Northern Pacific Railway Company was formerly a corporation organized and existing under and by virtue of an act of the Congress of the United States, entitled, "An act granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast, by the northern route," approved July 2, 1864; and a joint resolution of Congress extending the time for the completion of said railroad until July 1, 1868; and a joint resolution granting the consent of Congress provided for in section ten of said act, incorporating the Northern Pacific Railroad Company, approved March 1, 1869; the joint resolution of Congress granting the right of way for the construction of a railroad from Portland, Oregon, to a point west of the Cascade Mountains in Washington Territory, approved April 1, 1869; the joint resolution of Congress authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes, approved May 31, 1870. And complainant asks leave to refer to and have each of said acts and resolutions considered as though fully herein set forth.

That under and in pursuance of the said several acts and joint resolutions of Congress, the Northern Pacific Railroad Company constructed and put into operation, prior to January 1, 1890, all of its main line of road, extending from Ashland, in the State of Wisconsin, westward across the States of Minnesota, North Dakota, Montana and Idaho, and in the State of Washington to Walla Walla Junction; also all that other part of its main line of railroad extending from Portland, Oregon, to Tacoma, Washington; also the whole of its Cascade Branch, extending from Pasco Junction, in the State of Washington, to Tacoma, in the State of Washington.

That said Northern Pacific Railroad Company had also, prior to said first day of January, 1880, acquired and then owned all of the capital stock of the following named railroad companies and corporations, to wit, the St. Paul and Northern Pacific Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from St. Paul, Minnesota, to Brainerd, Minnesota; and from Little Falls, Minnesota, to Staples, Minnesota; also of

the Duluth and Manitoba Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a line of railroad extending from Winnipeg Junction, Minnesota, via Red Lake Falls, Minnesota, to the western boundary line of said State, and thence to Grand Forks, North Dakota; and thence to the international boundary line between the State of North Dakota and Canada; also of the Duluth, Crookston and Northern Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from Fertile Junction, Minnesota, through Crookston to Carthage Junction, Minnesota; also of the Little Falls and Dakota Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from Little Falls, Minnesota, to Morris, Minnesota; also of the Northern Pacific, Fergus Falls and Black Hills Railroad Company, a corporation organized under the laws of the State of Minnesota, and which owned a line of railroad extending from Wadena, Minnesota, thence westerly to the western boundary line of the State; and thence to North Dakota points; also all of the capital stock of various railroad corporations or companies organized in the States of North Dakota, South Dakota, Montana and Washington, which owned and operated various railway lines in said States respectively. The said railway lines built by said companies within the State of Minnesota, as well as those built outside of the State of Minnesota, and the capital stock of the corporations so building said lines, and owned by said Northern Pacific Railroad Company, as hereinbefore alleged, were operated, managed and controlled by said Northern Pacific Railroad Company as a system of railway or railways extending from and between various points in the State of Minnesota, more specifically hereinafter referred to, through said State and thence to the Pacific Coast; and aggregate about four thousand five hundred miles of railway.

VII.

That the Northern Pacific Railway Company is now and for upwards of five years last past has been a corporation organized under and by virtue of the laws of the State of Wisconsin; said corporation being organized during the year 1895. That thereafter and prior to the time said Northern Pacific Railway Company became possessed of and the owner of the railway lines and property formerly owned and operated by said Northern Pacific Railroad Company, said Northern Pacific Railway Company filed with the Secretary of State of the State of Minnesota, in accordance with the terms and provisions of the laws of said State of Minnesota, a duly authenticated and certified copy of its articles of incorporation, and thereupon said Northern Pacific Railway Company became a corporation of and within the State of Minnesota, and subject to all of the laws, regulations and provisions of said State of Minnesota relating to railway or railroad corporations, including those acts or parts of acts hereinafter specifically pleaded or referred to.

That under the charter or articles of incorporation of said Northern Pacific Railway Company the powers of said company are delegated to and exercised by a board of fifteen directors; that during the month of April, 1901, the following-named persons constituted and now are the members of the board of directors of said last named company: James J.

Hill, Robert Bacon, George F. Baker, E. H. Harriman, H. McK. Twombly, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman and Eben B. Thomas. That on the 13th day of November, 1901, J. Pierpont Morgan, with certain other persons to your oratrix unknown, but who were acting with said Morgan, owned and had in their possession, or held under and subject to their control and disposition, upwards of eighty-five per cent of the total capital stock of said Northern Pacific Railway Company then outstanding. That the total amount of capital stock of said Northern Pacific Railway Company then issued and outstanding amounts to one hundred and fifty-five millions of dollars, par value, seventy-five millions of dollars of which was preferred stock, subject to retirement as provided by the articles of incorporation and agreement under which the same was issued.

That during the year 1893 the said Northern Pacific Railroad Company became insolvent, and all of the property of said last named company, of whatever kind or character, was duly placed in the hands of receivers appointed for that purpose by the Circuit Court of the United States for the Eastern District of Wisconsin; and thereafter, in proceedings ancillary thereto, by the various Circuit Courts of the United States in whose jurisdictions said property was located. That after said Northern Pacific Railway Company had filed its said articles of incorporation in the State of Minnesota and had become subject to its laws, and during the year 1896, said Northern Pacific Railway Company duly purchased and became the owner of the entire railroad properties and railway lines, including the right of way, rolling stock and capital stock, formerly owned by said Northern Pacific Railroad Company; and immediately thereafter entered into the possession thereof; and at all times since has continuously owned and operated each and all of the said lines of railway so situated within the State of Minnesota, and which connect the cities of St. Paul and Minneapolis and Duluth, and various other villages and cities within the State of Minnesota, and connect with the lines of railway outside of said State of Minnesota.

That during the year 1899 said Northern Pacific Railway Company purchased, and ever since has owned and operated, a line of railway extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; that said last named line parallels and is a competing line of railway for both freight and passenger traffic with the line of railway between said Minneapolis and St. Paul and Duluth, hereinbefore described, and which is owned by said Eastern Railway Company of Minnesota, but operated, controlled and managed by said Great Northern Railway Company as a part of the system of said last named company, as hereinbefore alleged.

That the lines of railway now owned and operated by said Great Northern Railway Company within the State of Minnesota are parallel and competing lines for freight and passenger traffic with the lines of railway now owned, operated and controlled by said Northern Pacific Railway Company within the State of Minnesota, between the following points in said State, to wit: The cities of St. Paul and Minneapolis and the city of Duluth, Minnesota, and the various cities and villages between said points; also between the cities of St. Paul and Minneapolis and Crookston, Minnesota, by way of Fergus Falls and the various cities and villages

between said points; also between the cities of St. Paul and Minneapolis and Crookston by way of Breckenridge, and the towns and cities between said points; and also between the cities of Duluth and Crookston, and the cities and villages between said points, as well as the country adjacent to the lines of railway between each and all of said cities; and the said lines of railway owned, operated and controlled by said Great Northern Railway Company, and also the lines of railway owned, operated and controlled by said Northern Pacific Railway Company which connect with the said lines of railway owned, operated and controlled by each of said companies respectively within the State of Minnesota, are parallel and competing lines through the States of North Dakota, Montana, Idaho and Washington to Puget Sound on the Pacific Coast for passenger and freight traffic. That during all of the time aforesaid each and all of said lines of railway were maintained and operated by said respective companies as common carriers of freight and passengers within the State of Minnesota; and that said companies are now, and for upwards of eleven years last past have been, the only railway companies owning or operating lines of railway crossing the State of Minnesota and connecting the Pacific Ocean by rail with points in Minnesota; also the only lines of railway traversing east and west the northern tier of States of the United States lying west of the Mississippi River, and connecting such territory and territory tributary thereto by rail with the Pacific Ocean; and, with one exception, the only lines of railway crossing the north half of the State of Minnesota in any direction.

VIII.

That the Chicago, Burlington and Quincy Railway Company is and, for many years last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; and, as such, until the disposition of its capital stock as hereinafter alleged, owned, operated and controlled an extensive system of railway lines extending from the city of Chicago, in the State of Illinois, in a westerly direction to the city of Denver, in the State of Colorado; and also in a westerly and northwesterly direction from said city of Chicago, to the city of Billings, in the State of Montana; which last named point is a junction and competitive point for freight and passenger traffic with the said Northern Pacific Railway Company; and also from said city of Chicago to the cities of St. Paul and Minneapolis, in the State of Minnesota; and in addition to said main lines, owned, operated and controlled a large number of connecting and tributary lines, extending to various cities and towns in the States of Illinois, Iowa, Missouri, Wisconsin, Minnesota, Nebraska, Kansas, Wyoming and Montana. That the total mileage of said railway company is approximately seven thousand four hundred miles. That during the year 1901 the said Great Northern Railway Company and said Northern Pacific Railway Company jointly purchased ninety-eight per cent of the total capital stock of said Chicago, Burlington and Quincy Railway Company, aggregating approximately one hundred and seven millions of dollars, par value, and now own the same; and issued in payment therefor the joint bonds of said Great Northern and Northern Pacific Railway Companies, payable in twenty years from the date thereof, and bearing interest at the rate of four per cent per annum, payable semi-annually. That said Great Northern and North-

ern Pacific Railway Companies issued and delivered in exchange for each one hundred dollards in amount of said Chicago, Burlington and Quincy Railway Company stock two hundred dollars in amount of the said bonds.

That under and by virtue of the purchase of said stock the joint ownership and control of the said Chicago, Burlington and Quincy Railway Company is vested in and ever since has been exercised by the said Great Northern and Northern Pacific Railway Companies.

IX.

That the defendant Northern Securities Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. That said corporation was organized on the 13th day of November, A. D. 1901, with its principal office for the transaction of its business located at the city of Hoboken, county of Hudson and State of New Jersey, and is a citizen of the State of New Jersey.

That the articles of incorporation of said Northern Securities Company are as follows:

CERTIFICATE OF INCORPORATION

OF

NORTHERN SECURITIES COMPANY.

STATE OF NEW JERSEY, *ss:*

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the act of the legislature of the State of New Jersey, entitled "An act concerning corporations (Revision of 1896), and the acts amendatory thereof and supplementary thereto," do hereby certify as follows:

First. The name of the corporation is Northern Securities Company.

Second. The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the city of Hoboken, county of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Company. Such office is to be the registered office of the corporation.

Third. The objects for which the corporation is formed are:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while owners of such

stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds, or other securities or evidences of indebtedness or stock are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

(5) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

Fourth. The total authorized capital stock of the corporation is four hundred million dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth. The names and post-office addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

Name and post office address.	*Number of shares.*
George F. Baker, Jr., 258 Madison ovenue, New York, New York.	100
Abram M. Hyatt, 214 Allen avenue, Allenhurst, New Jersey.	100
Richard Trimble, 53 East Twenty-fifth street, New York, New York.	100

Sixth. The duration of the corporation shall be perpetual.

Seventh. The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class,

and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the act of the legislature of the State of New Jersey passed March 22, 1901, amending the seventeenth section of the act concerning corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employe of the corporation may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws, or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors may appoint one or more vice presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation; to determine whether any, and if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the

purpose of decreasing the capital stock of the corporation to the extent authorized by law.

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the board of directors or by a resolution of the stockholders.

The board of directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the board of directors may be altered or repeal by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

In witness whereof, we have hereunto set our hands and seals, the twelfth day of November, 1901.

GEORGE F. BAKER, Jr. (L. S.)
ABRAM M. HYATT. (L. S.)
RICHARD TRIMBLE. (L. S.)

Signed, sealed and delivered in presence of—
GEORGE HOLMES.

STATE OF NEW YORK, }
County of New York, } *ss:*
MANHATTAN, }

Be it remembered, that on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Barker, Junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I, having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

GEORGE HOLMES,
Master in Chancery of New Jersey.

Endorsed: "Received in the Hudson Co., N. J., Clerk's Office, Nov. 13, A. D. 1901, and recorded in Clerk's Record No. ——, on page ——. Maurice J. Stack, Clerk. Filed Nov. 13, 1901, George Wurts, Secretary of State."

That said Northern Securities Company was incorporated at the instigation and request, and under the direction of James J. Hill and William P. Clough, and certain other stockholders of said Great Northern Railway Company to your oratrix unknown, who were co-operating with said James J. Hill and William P. Clough, and who, with said Hill and Clough, owned and controlled, or have the disposition and management, as hereinafter alleged, of a very large majority of the capital stock of said Great Northern Railway Company; and J. Pierpont Morgan and certain other stockholders of said Northern Pacific Railway Company, to your oratrix unknown, who were co-operating with said Morgan, and who, with said Morgan, owned and controlled, or have the disposition and management of, a very large majority of the capital stock of said Northern Pacific Railway Company. That said Northern Securities Company was formed by George F. Baker, Jr., and Richard Trimble, of the city

of New York and State of New York, and Abram Hyatt, of Allenhurst, in the State of New Jersey, who adopted the said articles of incorporation. That said three last named parties had no interest in said corporation other than the formation of the same for and at the request of said James J. Hill, William P. Clough, J. Pierpont Morgan, and their several associate stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, as above alleged, acting in concert with said parties.

That said James J. Hill, William P. Clough and J. Pierpont Morgan, who, with their associates, did on said 13th day of November, 1901, and prior thereto, own and control a large majority of the capital stock of both said Great Northern Railway Company and said Northern Pacific Railway Company, were prior to, and at the time of, the organization of said Northern Securities Company, almost continually in conference with each other and with a large number of other stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, but whose names are to your oratrix unknown, considering such organization and the scheme and agreement herein referred to, and the means and manner by which the laws of Minnesota, hereinafter referred to, could be most successfully evaded or avoided, all of which facts were well known to the organizers of said Northern Securities Company, including the parties executing the said articles of incorporation. That said Northern Securities Company was organized solely for the purpose of carrying out and accomplishing the designs, agreement and plans of said James J. Hill and J. Pierpont Morgan and their said associate stockholders, as herein set forth, and to effect a consolidation of the property, railway lines, corporate powers and franchises of said Great Northern and Northern Pacific Railway Companies, respectively, through said defendant the Northern Securities Company.

That prior to the organization of said Northern Securities Company the said owners and holders of a large majority of the capital stock of said Great Northern Railway Company, as well as the owners and holders of a large majority of the capital stock of said Northern Pacific Railway Company, as a part of the scheme or plan herein alleged, as well as a part of the plan and purpose of the organization of said Northern Securities Company, entered into a mutual agreement or arrangement, the exact terms of which are unknown to your oratrix, but which is in substance as follows:

The said owners of a large majority of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company mutually agreed with each other and certain persons who thereafter became the officers and directors of said Northern Securities Company, to transfer or cause to be transferred to said Northern Securities Company in exchange for the capital stock of said last named company substantially all of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, respectively; the said capital stock of the Great Northern Railway Company to be transferred to and exchanged for the capital stock of the said Northern Securities Company on the basis of one share of the capital stock of the Great Northern Railway Company for one and 80–100 shares of the capital stock of said Northern Securities Company, and one share of the common stock of said Northern Pacific Railway Company for one and 15–100 shares of the

capital stock of said Northern Securities Company. The $75,000,000 of the preferred stock of said Northern Pacific Railway Company to be retired in accordance with the provisions of the articles of incorporation of said Northern Pacific Railway Company, and the conditions and agreements under which the same was issued; said retirement to take place on the 1st day of January, 1902. The funds for retiring said preferred stock to be raised by the issuance by said Northern Pacific Railway Company of its negotiable bonds, bearing date November 15, 1901, of the aggregate amount of seventy-five million dollars, payable January 1, 1907, in gold coin of the United States, with interest thereon at the rate of four per cent per annum, payable semi-annually in like gold coin, from and after January 1, 1902. The said bonds, however, to be convertible at the option of either the holders thereof, or said railway company, into shares of the common stock of said Northern Pacific Railway Company at the rate of one share of stock for each one hundred dollars of the principal sum of such bonds, and the said common stock, when so taken in exchange for such bonds, to be converted into stock of said Northern Securities Company upon the basis of one share for each one and 15–100 shares of stock of said Northern Securities Company.

That said preferred stock could only be retired by resolution of the board of directors of said Northern Pacific Railway Company; that a very large majority of said preferred stock was owned by certain individuals who were opposed to the agreement and plan herein referred to relative to turning over the management and control of said Northern Pacific Railway Company to said Northern Securities Company, and the holding of its stock by said Northern Securities Company; that the owners of said preferred stock so opposed to said agreement and plan were also owners of sufficient of the common stock of said Northern Pacific Railway Company to give them a small majority of the total capital stock of said Northern Pacific Railway Company; thus making it necessary, in order to carry out the plan and agreement herein set forth and to vest the management and control of said Northern Pacific Railway Company in said Northern Securities Company in the manner and for the purposes herein alleged, to retire said preferred stock; all of which was well known to the board of directors of said Northern Pacific Railway Company and to said J. Pierpont Morgan and his associate stockholders of said Northern Pacific Railway Company, as well as said Northern Securities Company.

That on or about the 13th day of November, 1901, the board of directors of said Northern Pacific Railway Company took such official action as was necessary to retire said preferred stock upon the basis and in accordance with the plan and agreement herein set forth; and thereafter said preferred stock was retired by the issuance of convertible bonds to the amount and in the manner herein alleged. That immediately after the retirement of said preferred stock, said Northern Pacific Railway Company, acting through its board of directors and executive officers, exercised its right and option of declaring said bonds to be convertible into the shares of the common stock of said Northern Pacific Railway Company, and thereupon the same were so converted and the common stock of said Northern Pacific Railway Company issued in exchange therefor, upon the basis and for the purposes herein alleged. That in order to prevent the persons who owned said preferred stock, and who were opposed to the carrying out of the plan and agreement herein referred to, from acquiring a like control

of the common stock, it was provided that the $75,000,000 of common stock into which the said bonds were convertible could only be subscribed for and taken by holders of the then outstanding $80,000,000 of the common capital stock of said Northern Pacific Railway Company; each share of said common stock then outstanding entitling the owner and holder thereof to take an additional seventy-five eightieths of a share of said $75,000,000 additional common stock. That the retirement of said preferred stock and the conversion of the said bonds into common stock of said Northern Pacific Railway Company, and the exchange of said common stock for stock of said Northern Securities Company, as herein alleged, were each and all a part of the agreement, plan and scheme of said J. Pierpont Morgan and his said associate stockholders of said Northern Pacific Railway Company who then and there owned and controlled a large majority of the then outstanding common stock of said Northern Pacific Railway Company, under and by which the complete management and control of said Northern Pacific Railway Company was to be, and was thereafter, turned over to and vested in said Northern Securities Company in order that said Northern Pacific Railway Company, its property and franchises, might be in effect consolidated with the property and franchises of said Great Northern Railway Company, as herein alleged. That said James J. Hill and his associate stockholders of said Great Northern Railway Company had full knowledge of and assisted in retiring said preferred stock for the purposes and objects herein alleged. That as a part of said agreement and plan entered into between said James J. Hill and his associate stockholders and said J. Pierpont Morgan and his associate stockholders, each and all of whom were then, and are now, acting in concert for the purpose of evading and violating the laws of the State of Minnesota, in the manner, for the purposes, and with the object and design herein set forth, and in furtherance of said purposes and design, and to avoid the effect of any litigation which might be instituted to defeat the consummation of the agreement, plan and scheme herein referred to of vesting the complete management and control of the railway lines, properties and franchises of said Great Northern and Northern Pacific Railway Companies in said defendant Northern Securities Company, said parties further undertook and agreed with each other and the persons who thereafter became the officers and directors of the defendant Northern Securities Company that pending the delivery and transfer of a majority of the capital stock of said Great Northern Railway Company to said Northern Securities Company, the same should be held by or under the control of some person or corporation to your oratrix unknown; and that pending such delivery it was mutually agreed between said Hill and his associate stockholders and said Morgan and his associate stockholders and the persons who thereafter became the directors and officers of the defendant, as well as the person or corporation so temporarily holding said stock that the same should be held during said period for the purposes above set forth in trust for the use and benefit of the defendant, the Northern Securities Company; and that during such time the parties holding said stock should attend and vote the same at all meetings of the stockholders of said Great Northern Railway Company, in the interests of the defendant, and as directed by the board of directors of said Northern Securities Company or the executive committee thereof, or in unison with the stock of said railway companies, actually assigned to and held by the

defendant. That said Northern Securities Company has not purchased and does not intend to purchase the stock of either of said railway companies, except by issuing its stock in exchange for and in lieu of the stock of said railway companies on the basis and in the manner and for the purposes herein alleged.

That for the unlawful purposes aforesaid the said Northern Securities Company, by circular letter heretofore issued to the public, has offered and is still offering to issue and exchange for the capital stock of the said Great Northern and Northern Pacific Railway companies, capital stock of said Northern Securities Company to the amount of one hundred and eighty dollars par value thereof for each share of capital stock of said Great Northern Railway Company, and to the amount of one hundred and fifteen dollars par value thereof for each share of stock of said Northern Pacific Railway Company. And that the said Northern Securities Company is about to receive, on the basis aforesaid, and will, unless enjoined therefrom, receive, hold and hereafter control all the capital stock of said Great Northern and Northern Pacific Railway Companies.

X.

That the organization of said Northern Securities Company in the manner hereinbefore alleged, and the making of said agreement or arrangement hereinbefore referred to, are each and all a part of a scheme or plan on the part of said James J. Hill and his said associate stockholders of the Great Northern Railway Company, and J. Pierpont Morgan and his said associate holders of the stock of said Northern Pacific Railway Company, under and by which the said two last named railway companies are to be in effect consolidated, and the complete management and control of the business affairs of said corporations respectively placed in one body and under the direction and control of one man or one board of directors, through and by means of said defendant. That pursuant to said plan, agreement and arrangement, and in consummation thereof, and for the purpose of placing the complete management and control of said Great Northern Railway Company and said Northern Pacific Railway Company under one management, and for the purpose of establishing, in effect, a consolidation of said railway companies, together with said railway lines and properties, in and through said defendant, the said J. Pierpont Morgan and his associate stockholders have actually assigned and delivered to said Northern Securities Company upwards of eighty-five per cent of the total capital stock of said Northern Pacific Railway Company; and your oratrix alleges, on information and belief, that said James J. Hill, and his associate stockholders of said Great Northern Railway Company have also actually assigned and delivered to said Northern Securities Company upwards of eighty-five per cent of the said capital stock of said Great Northern Railway Company. That the sole purpose, object and effect of the transfer of said stock by said James J. Hill and his said associates and the said J. Pierpont Morgan and his said associates to said Northern Securities Company was and is to transfer to and vest in said defendant Northern Securities Company the complete management and control of the respective lines of railway and railway properties of each of said railway companies within and without the State of Minnesota, and to place the complete management and control of the same, and the power to dictate the policy of each of said corporations, as

well as the power and authority to fix rates and charges for the transportation of both freight and passengers within the State of Minnesota, as well as without said State, in the hands of and under the control of one party or board of directors, and thereby create, foster and perpetuate a monopoly in railway traffic in the State of Minnesota.

That the purpose, object and effect of the incorporation of the defendant and the receipt by it of a *controlling amount of the capital stock of* the said Northern Pacific and Great Northern Railway Companies, as well as each act of the officers and board of directors thereof, in entering into, adopting or executing the agreement or plan herein set forth, including the issuance and exchange of the capital stock of the Northern Securities Company for the stock of the said Northern Pacific and Great Northern Railway Companies on the basis hereinbefore set forth, was and is to place the said railway companies and the property and franchises thereof under a single management, and enable a single party or body of men acting as the board of directors of the said Northern Securities Company, or such executive committee as they may designate, to fix all rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of said companies within the State of Minnesota; to determine what trains shall be operated over each or any of the lines of railway of each of said railway companies, and to remove all competition in freight or passenger traffic over said parallel and competing lines, and prevent the building of lines into new territory as well as into the territory now reached by only one of said lines of railway; that the purpose of said agreement and of the parties thereto was the creation of a trust or the formation of a combination by which a monopoly of railway traffic in northern Minnesota and elsewhere will be perfected; that the defendant company was organized for, and is to be used as a medium through and by which this unlawful agreement, purpose and object can, and, if not enjoined, will be accomplished; that this agreement and the consummation thereof is in restraint of trade, tends to create a monopoly in railway traffic and is against public policy, and void.

That holders of a large majority of the capital stock of both said Great Northern and Northern Pacific Railway Companies had knowledge of, consented to, and assisted in carrying out the agreement, arrangement and scheme herein set forth by which a large majority of the capital stock of each of said railway companies was to be exchanged for the capital stock of said Northern Securities Company upon the basis and for the purposes herein set forth; and the said stockholders of said Great Northern and Northern Pacific Railway Companies so consenting to, taking part and assisting in the formation of said Northern Securities Company, and the perfecting of the agreement and scheme herein set forth, constitute all of the stockholders of said Northern Securities Company; and the board of directors and executive officers of said Northern Securities Company hereinafter named have been selected from and elected by such stockholders of said Great Northern and Northern Pacific Railway Companies.

That under the articles of association of said Northern Securities Company, its corporate powers and entire business management is vested in a board of directors consisting of such number as shall be fixed from time to time, by the by-laws of said corporation, and the board of directors itself is authorized to make such by-laws as it deems best, and from time

to time to alter, amend or repeal any by-laws. That the board of directors of said company thereby has power to determine its own number, and to adopt rules and regulations for its own conduct and the conduct of the affairs of said corporation. The articles of association further provide that said board of directors may appoint an executive committee in the manner provided by the by-laws of the company, which committee shall exercise all the powers and duties of said board of directors.

That on or about the 14th day of November, A. D. 1901, the following named persons were elected as and now constitute the board of directors of said Northern Securities Company, to wit: For the term of one year, James J. Hill, George F. Baker, Daniel S. Lamont, James Stillman and N. Terhune; for the term of two years, Samuel Thorne, Charles E. Perkins, Jacob H. Schiff and William P. Clough; for the term of three years, John S. Kennedy, D. Willis James, E. T. Nichols, Robert Bacon and E. H. Harriman. That on the 15th day of November, A. D. 1901, said board of directors met and elected the following executive officers of said company, to wit: President, James J. Hill; First Vice President, John S. Kennedy; Second Vice President, George F. Baker; Third Vice President, D. Willis James; Fourth Vice President, William P. Clough; Secretary and Treasurer, E. T. Nichols.

Complainant further alleges that said James J. Hill and said William P. Clough were, on said last named date, the President and Vice President respectively of said Great Northern Railway Company; and both were members of the board of directors of said last named company. That said E. T. Nichols was, on said date and now is, the Secretary and Assistant Treasurer of said Great Northern Railway Company. That said James J. Hill and his associates either own or have in their possession or under their control, a large majority of the capital stock of said Great Northern Railway Company. That said James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, D. Willis James, John S. Kennedy, D. S. Lamont and James Stillman were, on said 14th day of November, 1901, and now are members of the board of directors of said Northern Pacific Railway Company, and constitute a majority of the board of directors of said named company.

That said James J. Hill and his associate directors and officers of said Northern Securities Company own and control a majority of the capital stock of said last named company; that during the month of December, 1901, said Northern Securities Company, through its directors and executive officers, began dictating the policy and management of said Northern Pacific as well as said Great Northern Railway Company, and ever since has been and now is directing and managing the business and property of both said Great Northern and Northern Pacific Railway Companies, and determining and enforcing freight and passenger rates on many of the lines of railway of said companies in the State of Minnesota, together with the manner and means of handling the freight and passenger business of said companies on such lines of railway, and will continue so to do unless enjoined as herein prayed.

That said Northern Securities Company has no authorized agent or representative within the State of Minnesota on whom a summons or other process in any legal proceeding may be served.

That the massing and concentration of said railway properties and the control and management thereof in the defendant company in the manner

hereinbefore outlined, tends to and does create a monopoly in railway traffic in the State of Minnesota, and tends to and does deprive the State of Minnesota and the citizens thereof of the privilege of competition in fixing charges and rates of transportation for a large amount of freight transported annually over the lines of railway of each of said railway companies, between stations upon the lines of railway of both said companies within the State of Minnesota.

That it has ever been a part of the settled and public policy of the State of Minnesota to prohibit therein, in any way, the consolidation in any manner of competing and parallel lines of railway; and to this end the legislature of the State of Minnesota did, in the year 1874, pass the following enactment, which ever since has remained and now is a part of the statute law of the State of Minnesota, known as chapter 29 of the General Laws of 1874, to wit:

"SEC. 1. No railroad corporation, or the lessees, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

"SEC. 2. This act shall take effect and be in force from and after its passage. Approved March 9, 1874."

That in the year 1881 the legislature of the State of Minnesota passed the following enactment, which ever since has remained and now is a part of the statute law of the said State and known as chapter 94 of the General Laws of 1881, to wit:

"SEC. 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line.

"SEC. 4. This act shall take effect and be in force from and after its passage. Approved March 3, 1881."

That said Northern Securities Company is a railroad corporation within the meaning of the laws of the State of Minnesota; and the purpose, object and design of the said organizers and promoters of said Northern Securities Company, both in the organization thereof and in the making and carrying out of the said plans, agreement and designs hereinbefore referred to, was and is to violate the said legislative enactments of the State of Minnesota, and to evade and escape the provisions thereof; and it is the purpose, intent and design of said corporation, its stockholders, directors, executive committee, officers, agents and representatives, to violate the said legislative enactments, and to evade and escape the terms and provisions thereof, and to effect a consolidation of said railway corporations and properties as herein alleged. That each and all the said acts are violations and evasions of the said laws and the settled public policy of the State of Minnesota, and unless said parties are enjoined will cause the State of Minnesota irreparable injury.

That for many years last past it has been a part of the settled policy of the State of New Jersey to permit the consolidation of only such lines of railroad as are or can be connected so as to form continuous lines of railroad, and not to permit the consolidation of parallel or competing lines; and to that end, in the year 1885, the legislature of the State of New Jersey enacted a law which permits the consolidation of such lines as shall or may form connecting or continuous lines of railroads.

Your oratrix is informed and believes, and upon information and belief alleges, that defendant is not the owner of any property or stock or securities of any corporation, except as above set forth, and is not engaged in any business whatever except such as is incidental to the ownership of such stock and the general management and control of said Great Northern and Northern Pacific Railway Companies and the railway lines and properties thereof.

Your oratrix further alleges that if the defendant is permitted to control and manage the affairs of said Great Northern and Northern Pacific Railway Companies, in a manner hereinbefore alleged or otherwise, all competition between them will forever cease, and a monopoly in railway traffic in Minnesota be created, to the great and permanent and irreparable damage and injury to the State of Minnesota and to the people thereof, and in violation of its laws.

That your oratrix has and can have no other adequate remedy or relief by action at law except as herein prayed for in equity.

To the end, therefore, that the defendant, the Northern Securities Company may, if it can, show cause why your oratrix should not have the relief herein prayed for, and that it may be compelled to answer all and singular the premises, and all matters and things herein stated, as fully and particularly as if they were here again repeated, and said company thereunto interrogated, and that the defendant may be required to answer without oath, its answer under oath being hereby expressly waived; and that the defendants may, by the decree of this court, be perpetually enjoined and restrained:

First. From voting at any meeting of the stockholders of either said Great Northern or Northern Pacific Railway Company any of the capital stock of either of said companies by any means or in any manner whatsoever, and from attending, by reason of such ownership, possession or control of stock, either through its officers or by proxy, or in any other manner, any meeting of the stockholders of either of said companies.

Second. That the defendant, its stockholders, officers, directors, or the executive committee thereof, its attorneys, representatives, agents or servants, and each of them, be enjoined and restrained from, in any way, aiding, advising, directing, interfering with or in any way taking part, directly or indirectly, in any manner whatsoever, in the management, control or operation of any of the lines of railway of either of said companies, or in the management or control of the affairs of either of said companies.

Third. That the said defendant, its officers, attorneys, representatives, agents or servants, including its board of directors, or any of its members as such, be enjoined and restrained from exercising any of the powers or performing any of the duties, or in any manner acting as a representative, officer, member of the board of directors or employe, of either said Great

Northern or Northern Pacific Railway Company, or in any way exercising any management, direction or control over the same.

Fourth. That said defendant, its stockholders, directors and other officers, representatives and agents, be enjoined and restrained from doing any and all acts and making any arrangements or combinations by contract or otherwise having for their object, effect or result the consolidation or establishment of a joint management or control in any manner whatsoever of the said Great Northern and Northern Pacific Railway Companies, their lines of railway or properties.

Fifth. That the said defendant be enjoined from either directly or indirectly holding, owning or controlling any of the stock of either of said companies at one and the same time for any of the purposes or objects alleged in said bill, or otherwise.

Sixth. That in case it shall appear upon the hearing that the defendant owns or controls, or is acting in concert with the owners of, a majority of the capital stock of either of said railway companies, and owns or controls a minority of the stock of the other of said companies, then that the defendant, its officers, directors, agents, or representatives, be enjoined and restrained from receiving, acquiring or controlling any additional capital stock of such other railway company.

Seventh. And your oratrix further prays the leave of this court to amend this its bill of complaint, if amendment thereto shall become necessary, including the right to bring in other parties defendant for the purpose of giving force and effect to any decree that may be made by the court herein.

And that complainant be granted such other and further or different relief as the nature of this case may require, and as shall be agreeable to equity and good conscience.

Mr Justice SHIRAS delivered the opinion of the Court.

Whether a bill in equity filed in this court, in the name of a State, which seeks to prevent by injunction a corporation organized under the laws of another State with power to acquire and hold shares of the capital stock of any other corporation, from obtaining and exercising ownership and control of two or more competing railroad companies of the complainant State, so as to evade and defeat its laws and policy forbidding the consolidation of such railroads when parallel and competing, presents the case of a controversy of a civil nature whereof this court has jurisdiction under the Constitution and laws of the United States, and whether the bill in the present case is of that description, or whether it is the case of a suit brought by a State to enforce its penal statutes, and hence within the principle of the decision in *Wisconsin* v. *Pelican Insurance Co.*, (127 U. S. 265,) are questions which have been ably discussed by counsel.

But it is not necessary for us to consider and answer those questions, for, in view of the nature of the facts presented and the remedies prayed for in the bill proposed to be filed, we think that the suit is defective for want of essential parties whose rights would be vitally affected by the relief sought therein.

The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting interests are not brought out upon the pleadings by the original parties thereto. (Story's Eq. Plds. sec. 72.)

The established practice of courts of equity to dismiss the plaintiff's bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. (*Shields* v. *Barrow*, 17 How. 130; *Hipp* v. *Babin*, 19 How. 271, 278; *Parker* v. *Woolen Co.*, 2 Black, 545.)

In the case of *Shields* v. *Barrow*, *ub. supra*, the question was fully discussed, and it was shown, upon a review of the previous cases, that there are three classes of parties to a bill in equity. They are: 1. Formal parties. 2. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. The court in respect to the act of Congress of February 28, 1839, (5 Stat. 321,) and to the forty-seventh rule in equity practice, said:

"The first section of that statute enacts: That when in any suit, at law or in equity, commenced in any court of the United States, there shall be several defendants, any one or more of whom shall not be inhabitants of or found within, the district where the suit is brought, or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction, and proceed to the trial and adjudication of such suit between the parties who may be properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not

regularly served with process, or not voluntarily appearing to answer; and the non-joinder of parties, who are not so inhabitants, or found within the district, shall constitute no matter of abatement or other objection to said suit.

"This act relates solely to the non-joinder of persons who are not within the reach of the process of the court. It does not affect any case where persons, having an interest, are not joined because their citizenship is such that their joinder would defeat the jurisdiction; and, so far as it reaches suits in equity, we understand it to be no more than a legislative affirmance of the rule previously established by the cases of *Cameron* v. *McRoberts*, (3 Wheat. 591;) *Osborne* v. *The Bank of the United States*, (Ib. 738,) and *Harding* v. *Hardy*, (11 Ib. 132.) For this court had already there decided that the non-joinder of a party who could not be served with process would not defeat the jurisdiction. The act says it shall be lawful for the court to entertain jurisdiction; but as is observed by this court, in *Mallowe* v. *Hinde*, (12 Wheat. 198,) when speaking of a case where an indepensable party was not before the court, 'we do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction; we put it on the ground that no court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court.' So that, while this act removed any difficulty as to jurisdiction, between competent parties, regularly served with process, it does not attempt to displace that principle of jurisprudence on which the court rested the case last mentioned. And the forty-seventh rule is only a declaration, for the government of practitioners and courts, of the effect of this act of Congress, and of the previous decisions of this court, on the subject of that rule. (*Hogan* v. *Walker*, 14 How. 36.)

"It remains true, notwithstanding the act of Congress and the forty-seventh rule, that a circuit court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person, that complete and final justice cannot be done between the parties to the suit without affecting those rights."

California v. *Southern Pacific Co.*, (157 U. S. 229,) was a case in several particulars like the present one. There a bill was filed in this court by the State of California against the Southern Pacific Company, a corporation of the State of Kentucky, claiming title and jurisdiction by the State over certain large tracts of land lying upon the shores of the bay of San Francisco and over the harbor waters of said bay, including San Antonio Creek, and averring that the Southern Pacific Company claimed adversely to the State, and was engaged in placing structures in and upon said tracts of land, thereby obstructing navigation in the bay and adjoining waters. The bill prayed for a decree quieting the title of the State and enjoining the defendant company from maintaining the structures that it had placed upon said tracts and the adjacent waters. The defendant company answered the bill, denying the ownership of the complainant in the premises in dispute, and setting forth its own title derived from the

town of Oakland, as to the whole of the water front of that town, through one Carpentier, as grantee of said town by ordinance and deed of conveyance, and claiming that by subsequent mesne conveyances the said title and property had become vested, as to a part thereof, in the Central Pacific Railroad Company, and, as to another part, in the South Pacific Coast Railway Company, and in the defendant company as lessee. It further was claimed that certain ordinances and deeds of the town of Oakland operated as a grant by the city of Oakland and the State of California of the land to the Oakland Water Front Company, as grantee or alienee of Carpentier. The case was duly put at issue, and a commissioner was appointed to take testimony therein and to return the same to the court.

When the case came on for hearing it was held by this court that the city of Oakland and the Oakland Water Front Company were so situated in respect to the litigation that the court ought not to proceed in their absence. In reaching this conclusion the court reviewed the cases, including the cases above cited and others.

Upon the contention that the city of Oakland and the Oakland Water Front Company might be made parties defendant, and the court thus enabled to proceed with the case, the court held that this could not be done, because this court could not exercise original jurisdiction in a suit between a State on the one hand and a citizen of another State and citizens of the complainant State on the other. Accordingly, the bill was dismissed for want of parties who should be joined but could not be without ousting our jurisdiction.

We shall, therefore, proceed to examine the substance of the bill proposed to be filed, in order to see whether it discloses a case in which a decree could be granted which would do final and complete justice between the nominal parties without vitally affecting other persons not before the court. As already stated, a conclusion reached that the suit cannot be entertained for want of necessary and essential parties, will not imply any expression of opinion beyond that question.

As the bill is set forth in full in the preceding statement, it will not be necessary to here repeat its allegations. They may be summarized as follows:

The complainant is the State of Minnesota; the defendant is the Northern Securities Company, a corporation of the State of New Jersey.

It is part of the policy of the State of Minnesota, as declared in its public statutes, to prohibit therein the consolidation in any manner of competing and parallel lines of railway. The statutes specially recited in the bill are the act of March 9, 1874, the first section whereof is in the following terms: "No railroad corporation, or the lessees, purchaser or managers of any railroad company, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or

franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues;" and the act of March 3, 1881, of which the third section is as follows: "No railroad company shall consolidate with, lease, or purchase, or in any way become the owner of or control any other railroad corporation or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line."

The Great Northern Railway Company is a corporation organized and existing under an act duly passed by the Territory of Minnesota and under various subsequent acts of the State of Minnesota, and owns and controls, as lessee, several important lines of railroad, some only within and others extending beyond the State of Minnesota, and which are maintained by the Great Northern Railway Company as one complete system. The board of directors of the Great Northern Railway Company, at the time of the organization of the Northern Securities Company, to wit, on or about November 13, 1901, was and now is composed of the following-named persons, to wit: James J. Hill, James N. Hill, Samuel Hill, William P. Clough, Edward Sawyer, Jacob H. Schiff and Henry W. Cannon. That on said last mentioned date the Great Northern Railway Company had issued and there was then outstanding a total of one hundred and twenty-five million dollars, par value, of the capital stock of said corporation, of which, it is alleged, that said James J. Hill was on said last mentioned date the owner of or had subject to his direction and disposition, more than a majority of said capital stock so outstanding.

The Northern Pacific Railway Company was organized under the laws of the State of Wisconsin of the year 1895, and afterwards, by filing a certified copy of its articles of incorporation, became a corporation of the State of Minnesota and subject to the laws of that State relating to railroad corporations. In the year 1896 the Northern Pacific Railway Company duly purchased and became the owner of the entire railroad properties and lines formerly owned by the Northern Pacific Railroad Company, and at all times since has continuously owned and operated each and all of said lines of railway situated within the State of Minnesota, and which connect the cities of St. Paul and Minneapolis and Duluth, and connect with the lines of railways outside the State of Minnesota. During the year 1899 the said Northern Pacific Railway Company purchased, and ever since has owned and operated a line of railway extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota. Said last men-

tioned line parallels and is a competing line of railway for both freight and passenger traffic with the line of railway between said Minneapolis and St. Paul and Duluth, owned by the Eastern Railway Company of Minnesota, but which is operated, controlled and managed by said Great Northern Railway Company, as a part of the system of that company. The lines of railway now owned and operated by said Great Northern Railway Company within the State of Minnesota are parallel and competing lines for freight and passenger traffic with the lines of railway now owned, operated and controlled by said Northern Pacific Railway Company within the State of Minnesota; and also said lines of railway owned, operated and controlled by said Great Northern Railway Company, and also the lines of railway owned, operated and controlled by said Northern Pacific Railway Company, which connect with the lines of railway owned, operated and controlled by each of said companies respectively within the State of Minnesota, are paralliel and competing lines through the States of North Dakota, Montana, Idaho and Washington to Puget Sound on the Pacific Coast, for passenger and freight traffic. That said companies are the only railway companies owning or operating lines of railway crossing the State of Minnesota and connecting the Pacific Ocean by rail with points in Minnesota.

That the Chicago, Burlington and Quincy Railway Company, a corporation of the State of Illinois, has, for many years last past, owned, operated and controlled an extensive system of railway lines, connecting the city of Chicago with the city of Denver, in the State of Colorado, and with the city of Billings, in the State of Montana, which last named point is a junction and competitive point for freight and passenger traffic with said Northern Pacific Railway Company, &c. That during the year 1901 the said Great Northern Railway Company and said Northern Pacific Railway Company jointly purchased ninety-eight per cent of the total capital stock of said Chicago, Burlington and Quincy Railway Company, aggregating approximately one hundred and seven million of dollars, par value, and now own the same, and issued in payment therefor the joint bonds of said Great Northern and Northern Pacific Railway Companies, payable in twenty years from the date thereof, and bearing interest at the rate of four per cent per annum, payable semi-annually. That the said Great Northern and Northern Pacific Railway Companies issued and delivered in exchange for each one hundred dollars in amount of said Chicago, Burlington and Quincy Railway Company stock two hundred dollars in amount of the said bonds; and that under and by virtue of the purchase of the said stock the joint ownership and control of the said Chicago, Burlington and Quincy Railway Company are vested in, and ever since have been exercised by, the said Great Northern and Northern Pacific Railway Companies. During April, 1901 and ever since, the following named

persons constituted and now are the members of the board of directors of the Northern Pacific Railway Company: James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, H. McK. Twombly, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman and Eben B. Thomas. On November 13, 1901, J. Pierpont Morgan, with certain other unknown persons, but who were acting with said Morgan, owned and had in their possession, or held and had subject to their control and disposition, upwards of eighty-five per cent of the total capital stock of said Northern Pacific Railway Company. The Northern Securities Company was organized on November 13, 1901, with its principal office at Hoboken, in the State of New Jersey, and the objects for which the corporation was formed, as stated in the articles of incorporation, are to acquire and hold, as investments, the bonds, securities and capital stock of any other corporation or corporations of the State of New Jersey, or of any other State, territory or country, and while owner of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; and it is declared that the corporation shall have power to conduct its business in other States and in foreign countries, to have one or more offices out of the State, and to purchase, hold and convey real and personal property out of the State.

It is alleged that the Northern Securities Company was incorporated at the instigation and request of James J. Hill, William P. Clough, and certain unknown stockholders of said Great Northern Railway Company, who, with said Hill and Clough, owned or controlled, or have the disposition and management of, a large majority of the capital stock of said Great Northern Railway Company, and with the co-operation of J. Pierpont Morgan and certain other unknown stockholders of said Northern Pacific Railway Company, who, with said Morgan, owned and controlled, or have the disposition and management, of, a large majority of the capital stock of said Northern Pacific Railway Company.

On November 14, 1901, James J. Hill, George F. Baker, Daniel S. Lamont, James Stillman, N. Terhune, Samuel Thorne, Charles L. Perkins, Jacob H. Schiff, William P. Clough, John S. Kennedy, Willis James, E. T. Nichols, Robert Bacon and E. H. Harriman were elected directors of the Northern Securities Company, and said directors on November 15, 1901, elected James J. Hill to be president, and John S. Kennedy, George F. Baker, Willis James and William P. Clough to be vice presidents, and E. T. Nichols, to be secretary and treasurer, of said company. It is alleged that the holders of a large majority of the capital stock of both said Great Northern and Northern Pacific Railway Companies had knowledge of and assisted in the formation of the said Northern Securities Company,

and that such stockholders, so consenting and assisting, constitute all of the stockholders of said Northern Securities Company.

The bill charges that the purpose of the formation of the Northern Securities Company was to place the management and control of the Great Northern Railway Company and of the Northern Pacific Railway Company under one management, and to thus, in effect, establish a consolidation of said railway companies, and defeat and evade the statutes and policy of the State of Minnesota forbidding consolidation of parallel and competing lines of railway.

The relief prayed by the bill is that the defendant company be perpetually enjoined and restrained from voting, at any meeting of either said Great Northern and Northern Pacific Railway Company, any of the capital stock of either of said companies by any means or in any manner whatsoever, and from attending, by reason of such ownership, possession or control of stock, either through its officers or by proxy, or in any other manner, any meeting of the stockholders of either of said companies, and from, in any way, aiding, advising, directing, interfering with or in any way taking part, directly or indirectly, in any manner whatsoever, in the management, control, or operation of any of the lines of railway of either of said companies; and that said defendant, its officers, attorneys, representatives, agents, or servants, including its board of directors, or any of its members as such, be enjoined and restrained from exercising any of the powers or performing any of the duties, or in any manner acting as a representative, officer, member of the board of directors or employe, of either said Great Northern or Northern Pacific Railway Company, or in any way exercising any management, direction or control over the same; and that said defendant, its stockholders, directors and other officers, representatives and agents, be enjoined and restrained from doing any and all acts and making any arrangements or combinations, by contract or otherwise, having for their object, effect or result the consolidation or establishment of a joint management or control in any manner whatsoever of the said Great Northern and Northern Pacific Railway Companies, their lines of railway or properties; and that said defendant be enjoined from either directly or indirectly holding, owning or controlling any of the stock of either of said companies at one and the same time for any of the purposes or objects alleged in the bill, or otherwise, and that in case it shall appear upon the hearing that the defendant owns or controls, or is acting in concert with the owners of, a majority of the capital stock of either of said railway companies, and owns or controls a minority of the stock of the other of said companies, then that the defendant, its officers, directors, agents or representatives, be enjoined and restrained from receiving, acquiring or controlling any additional capital stock of such other railway company; and further for

leave to amend the bill of complaint, if amendment thereto shall become necessary, including the right to bring in other parties defendant for the purpose of giving force and effect to any decree that may be made by the court herein.

More briefly stated, the case presented by the charges and prayers of the bill is that the State of Minnesota is apprehensive that a majority of the stockholders respectively of the Great Northern Railway Company and of the Northern Pacific Railway Company have combined and made an arrangement, though the organization of a corporation of the State of New Jersey, whereby such a consolidation, or what is alleged to amount to the same thing, a joint control and management of the Great Northern and Northern Pacific Railway Companies, shall be effected as will operate to defeat and overrule the policy of the State in prohibiting the consolidation of parallel and competing lines of railway, and therefore appeals to a court of equity to prevent by injunction the operation and effect of such a combination and arrangement.

But at once, as we have seen, the court is put upon inquiry whether the parties and persons to be affected by such an injunction are before it.

The narrative of the bill unquestionably discloses that the parties to be affected by a decision of the controversy are, directly, the State of Minnesota, the Great Northern Railway Company, the Northern Pacific Railway Company, corporations of that State, and the Northern Securities Company, a corporation of the State of New Jersey, and, indirectly, the stockholders and bondholders of those corporations, and of the numerous railway companies whose lines are alleged to be owned, managed or controlled by the Great Northern and Northern Pacific Railway Companies.

Can such a controversy be determined with due regard to the interests of all concerned, by a suit solely between the State of Minnesota and the Northern Securities Company? It is, indeed, alleged that all of the stockholders of the Northern Securities Company are stockholders in the two railroad companies, and, therefore, it may be said that the latter stockholders are sufficiently represented in the litigation by the Northern Securities Company; but it is not alleged that the stockholders of the Northern Securities Company constitute or are composed of all the stockholders of the two railroad companies, and, in fact, the contrary is conceded in the allegations of the bill that a majority only of the stock of one, or perhaps both, of the two railroad companies is owned, or at least controlled and managed, by the Northern Securities Company. It is obvious, therefore, that the rights of the minority stockholders of the two railroad companies are not represented by the Northern Securities Company. They have a right to be represented, in the controversy, by the companies whose stock they hold, and their rights ought not

to be affected without a hearing, even if it were conceded that a majority of the stock in such companies, held by a few persons, had assisted in forming some sort of an illegal arrangement. Moreover, it must not be overlooked that it is not the private interests of stockholders that are to be alone considered. The directors of the Great Northern and Northern Pacific Railway Companies are appointed to represent and protect not merely the private and pecuniary interests of the stockholders, but the rights of the public at large, which is deeply concerned in the proper and advantageous management of these public highways. It is not sufficient to say that the Attorney General, or the governor, or even the legislature of the State, can be conclusively deemed to represent the public interests in such a controversy as that presented by the bill. Even a State, when she voluntarily becomes a complainant in a court of equity, cannot claim to represent both sides of the controversy. Not only have the stockholders, be they few or many, a right to be heard, through the officers and directors whom they have legally selected to represent them, but the general interests of the public, which might be deeply affected by the decree of the court, are entitled to be heard; and that, when the State is the complainant, and in a case like the present, can only be effected by the presence of the railroad companies as parties defendant.

Upon investigation it might turn out that the allegations of the bill are well founded, and that the State is entitled to relief; or it might turn out that there is no intention or design on the part of the railroad companies to form any combination in disregard of the policy of the State, but that what is proposed is consistent with that policy and advantageous to the communities affected. But, in making such investigation, a court of equity must insist that both sides of the controversy shall be adequately represented and fully heard.

When it appears to a court of equity that a case, otherwise presenting ground for its action, cannot be dealt with because of the absence of essential parties, it is usual for the court, while sustaining the objection, to grant leave to the complainant to amend by bringing in such parties. But when it likewise appears that necessary and indispensable parties are beyond the reach of the jurisdiction of the court, or that, when made parties, the jurisdiction of the court will thereby be defeated, for the court to grant leave to amend would be useless. (Sec. 2 of Article 3 of the Constitution of the United States.)

As then, the Great Northern and the Northern Pacific Railway Companies are indispensable parties, without whose presence the court, acting as a court of equity, cannot proceed, and as our constitutional jurisdiction would not extend to the case if those companies were made parties defendant, the motion for leave to file the proposed bill must be and is

Denied.